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Vol. II
TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 798

**THE DENVER UNION STOCK YARD COMPANY,
APPELLANT,**

vs.

THE UNITED STATES OF AMERICA AND SECRETARY OF AGRICULTURE

**APPEAL FROM THE DISTRICT COURT OF THE DIXIE
THE DISTRICT OF COLORADO**

FILED FEBRUARY 14, 1938.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLORADO

VOL. II

INDEX.

Original Print

| | |
|---|-----|
| Record from D. C. U. S., District of Colorado—Continued. | |
| Order convening statutory three-judge court (omitted in printing) | 348 |
| Finding of fact, conclusions of law and order for interlocutory injunction .....(omitted in printing).... | 350 |
| Bond on interlocutory injunction (omitted in printing) | 356 |
| Interlocutory injunction..... | 358 |
| Answer to petition | 360 |
| Minute entries of argument and submission (omitted in printing) | 366 |
| Stipulation re results of application of Secretary's rate order to 1935 and 1936 business | 368 |
| Stipulation re expenses incurred by plaintiff in this rate matter | 375 |
| Stipulation re comparison of income during stock show with weeks immediately prior and subsequent thereto | 377 |
| Plaintiff's exhibit No. 1—statement as to income | 364 |
| Plaintiff's exhibit No. 2—statement as to income | 365 |
| Abstract of evidence before Secretary of Agriculture, | 380 |
| Docket No. 450 | 369 |
| Index to abstract of evidence | 370 |

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 2, 1938.

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[fols. 348-358] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

INTERLOCUTORY INJUNCTION—Filed March 11, 1937

This cause coming on to be heard this ninth day of March, 1937, before a statutory three-judge court sitting as the District Court of the United States for the District of Colorado, convened pursuant to the provisions of the Act of Congress of October 22, 1913, 28 U. S. C. A.; Section 47, known as the District Court Jurisdiction Act, and pursuant to the provisions of the Packers and Stockyards Act 1921, relative thereto, and the Court having made and entered its Findings of Fact, Conclusions of Law and Order directing the issuance of an interlocutory injunction as hereinafter stated, upon the giving of a bond as required by the said order;

And the petitioner having duly filed a bond satisfactory to and approved by the court in the penal sum of \$50,000.00 conditioned as in said order required;

[fol. 359] Now Therefore, the United States of America and the Secretary of Agriculture of the United States, the defendants above named, its, his or their agents, servants and all persons acting or purporting to act by or on behalf of either or both of them, be and are hereby strictly enjoined and restrained until further order of the Court, absolutely to desist and refrain from enforcing or attempting to enforce a certain order promulgated by the Secretary of Agriculture, dated February 17, 1937, in a certain proceeding entitled "The Secretary of Agriculture vs. Denver Union Stock Yard Company, Respondent, Bureau of Animal Industry Docket 450", or from prosecuting petitioner for recovery of penalties, or otherwise, for failure to comply with the provisions of said order, pending the final hearing and the final decision of this Court in this cause.

This writ of interlocutory injunction shall continue until further order of the Court herein and is and shall be binding upon all persons.

Hereof Fail Not under pain of penalty that will fall upon your failure to obey this injunction.

Dated at Denver, Colorado, this 9th day of March, 1937.

Orie L. Phillips, Circuit Judge. Sam G. Bratton,
Circuit Judge. T. Blake Kennedy, Judge.

[fol. 360] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed April 8, 1937

Come the defendants in the above-entitled cause and answer the petition hereinbefore filed, as follows:

1. Defendants admit the allegations contained in Paragraphs I to IX, inclusive, of the said petition.
2. Defendants deny each and every allegation contained in Paragraph X of the said petition.
3. Answering Paragraph XI of the said petition, the defendants deny that the findings and order of the Secretary are contrary to law, or unsupported by substantial evidence, or contrary to the evidence and to the weight of the evidence, or confiscatory, arbitrary or unreasonable, or deprive petitioner of his property without due process of law in violation of the Fifth Amendment of the Constitution of the United States.

(a) Answering sub-paragraph (a) of said Paragraph XI of the said petition, the defendants deny each and every allegation contained therein.

(b) Answering sub-paragraph (b) of said Paragraph XI of the said petition, defendants deny each and every allegation contained therein, except that defendants admit that the Secretary has excluded from the rate basis of petitioner [fol. 361] the value of 8.985 acres of land, together with the structures thereon, the said structures consisting of all the railroad trackage of petitioner, the loading and unloading docks, the loading and unloading chutes and pens, a yardmaster's office and a trackman's tool house, and that the

Secretary excluded the said 8.985 acres of land on the ground that the said land, together with the said structures thereon, are not used and useful in the rendition of services for which petitioner's rates are charged; and the defendants further admit that the Secretary did not find that the petitioner owns more trackage than is necessary for the handling of the livestock coming to its yards or that the said facilities for the loading and unloading of the livestock from cars are unnecessary or excessive in any way or to any degree.

(c) Answering sub-paragraph (c) of said Paragraph XI of the said petition, the defendants deny each and every allegation contained therein, except that they admit that the Secretary excluded from the rate base of the petitioner 2.633 acres of land and the structures thereon, the said land and structures being used for the purpose of the annual stock show, for the reason that the Secretary found that the said land and structures are not used and useful in the rendition of stockyard services; and the defendants further admit that in determining the net income of petitioner for rate-making purposes, the Secretary did ~~not exclude~~ from the said income the item of \$12,240.97 referred to in sub-paragraph (c) of Paragraph XI of the said petition, and the defendants allege the said item of \$12,240.97 is a fictitious and hypothetical item and that the evidence does not show that this amount was derived from the said annual stock show as alleged.

(d) Answering the allegations of sub-paragraph (d) of Paragraph XI of the said petition, defendants deny each [fol. 362] and every allegation contained therein, except that the defendants admit that the Secretary found that the fair value of petitioner's land used and useful for stockyard services is \$536,825, and that the sole testimony concerning the value of petitioner's land offered by the Secretary was by the witness Zelinski, a regular and permanent employee of the Department of Agriculture, who admitted in evidence that prior to the said proceeding he had never appraised any land or property in Denver or its vicinity or at any place west of Omaha, Nebraska, and that he spent two weeks on the appraisal of 130.57 acres of land owned by the petitioner, and that the evidence of petitioner on the value of his said lands was given by three appraisers each of whom had been actively engaged for a period of some twenty to thirty-five

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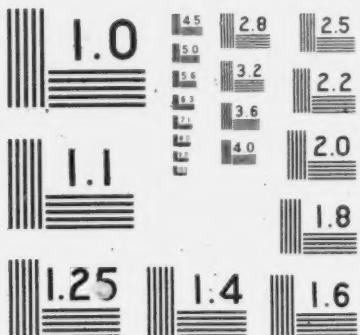
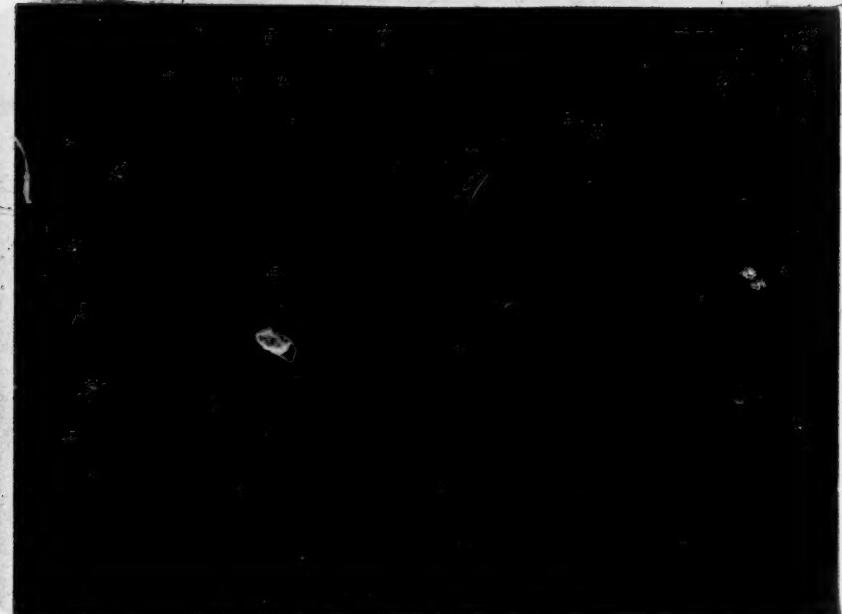


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years in the appraisal, purchase, sale and handling of industrial property in Denver.

(e) Answering the allegations of sub-paragraph (e) of Paragraph XI of the said petition, the defendants deny each and every allegation contained therein, except that they admit that the Secretary found that the reproduction new value less depreciation of petitioner's buildings, structures and equipment, used and useful in the rendition of stock-yard services, is 80.545 per cent of \$2,118,960, or \$1,706,717.14.

(f) Answering sub-paragraph (f) of Paragraph XI of the said petition, the defendants deny each and every allegation contained therein, except that they admit the Secretary found a reasonable rate of return on the fair value of petitioner's property to the 6½ per cent of the value of said property.

(g) Answering sub-paragraph (g) of Paragraph XI of the said petition, the defendants deny that the proposed findings and order referred to in the said paragraph represented that the condition per cent of petitioner's structural property would be fixed at 84 per cent, or any other particular [fol. 363] figure, or that the rate of return, plus a so-called cushion, would be fixed at slightly more than 7 per cent, or at any other particular figure; and defendants further deny that the action of the Secretary in fixing the condition per cent of petitioner's structural property at 80.545 per cent and the rate of return at 6½% was arbitrary or deprives petitioner of his property without due process of law in violation of the Fifth Amendment of the Constitution of the United States; otherwise defendants admit the allegations contained in the said sub-paragraph (g).

(h) Answering sub-paragraph (h) of Paragraph XI of the said petition, the defendants deny each and every allegation contained in said paragraph, except that defendants admit the Secretary found that an adequate allowance for going concern value had been included in the valuations of petitioner's land, structures and equipment.

(i) Answering sub-paragraph (i) of Paragraph XI of the said petition, the defendants deny each and every allegation contained therein, except that they admit that the

Secretary found that the class of purchasers commonly known as "yard traders" was rendered free service by petitioner, and that such free service was unjustly discriminatory and unreasonable, and resulted in an increased charge upon shippers to the market, and that the Secretary found at paragraph 210 that petitioner's rates were unjustly discriminatory.

(j) Answering sub-paragraph (j) of said Paragraph XI of the said petition, the defendants deny that the finding of the Secretary that only \$325 should be covered into rates each year for dues, donations and subscriptions is arbitrary, unreasonable, unlawful, or beyond the Secretary's power to make or constitutes an unwarranted invasion of the managerial power and function, or deprives [fol. 364] petitioner of his property without due process of law in violation of the Fifth Amendment of the Constitution of the United States; defendants further deny that the dues, donations, and subscriptions referred to in said sub-paragraph (j) are not unreasonable in any particular or to any degree; otherwise defendants admit the allegations contained in said sub-paragraph (j).

(k) Answering sub-paragraph (k) of said Paragraph XI of the said petition, the defendants admit that the Secretary found that a reasonable allowance to be covered into rates on account of the expenses of hearings under the Packers and Stockyards Act, 1921, was \$100 per month, or \$1200 annually, and that the evidence upon which the Secretary's finding and order are based shows that the average annual expenses of petitioner for the 5-year period, 1930 to 1934, inclusive, was \$8,786.76, or a total expenditure during said period of \$43,933.80; defendants deny that they have any knowledge or information sufficient to form a belief as to the amount of the expenses which will be incurred by the petitioner in connection with the pending proceedings; otherwise defendants deny each and every allegation contained in the said sub-paragraph (k).

(l) Answering sub-paragraph (l) of Paragraph XI, the defendants deny each and every allegation contained therein, except that they admit the Secretary found that nothing should be covered into rates on account of the Federal surtax on undistributed profits and that he stated as the reason

for the said finding that if the dividend policy of petitioner within the next few years is the same as it was in 1934 petitioner would not be subject to the said tax; and the defendants further admit that petitioner has outstanding an issue of bonds in the aggregate principal amount of \$1,500,000 and that the terms of the said bonds require petitioner to deposit annually the sum of \$30,000 in a sinking fund for the retirement of the said bonds.

4. Answering Paragraph XII of said petition, the defendants admit that the order of the Secretary directs petitioner on and after thirty days from February 17, 1937, to cease and desist from making or collecting charges for yardage, feed, and bedding ~~at any rate other than that found by the~~ the Secretary to be just and reasonable, and that the said order also directs petitioner at least ten days prior to the thirtieth day from February 17, 1937, to publish, give notice of, and [fols. 365-367] file with the Secretary a schedule effective thirty days from February 17, 1937, showing all rates and charges for stockyard services, the said rates and charges not to be in excess of the rates and charges determined by the Secretary to be just and reasonable; and defendants allege that the other and remaining allegations contained in said Paragraph XII set forth conclusions of law which require no answer.

5. Except as hereinbefore expressly admitted, the defendants deny each and every allegation contained in the said petition.

Wherefore, having fully answered, the defendants pray that the petition be dismissed with costs to the petitioner and for such other and further relief as the Court may deem appropriate.

Thomas J. Morrissey, United States Attorney. Robert H. Jackson, Assistant Attorney General. Hugh B. Cox, Wendell Berge, Special Assistants to the Attorney General. C. E. Miles, Attorney, Department of Agriculture.

[fol. 368] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE RESULTS OF APPLICATION OF SECRETARY'S
RATE ORDER, ETC.—Filed October 8, 1937

I.

It is hereby stipulated and agreed by and between the parties to this cause that the facts and figures contained in the following table, as qualified by the *footnote appended* thereto, are a true and correct statement of the gross revenues which petitioner would have received from its stock-yard business in the years 1935 and 1936, respectively, had petitioner charged the maximum rates prescribed as reasonable by the Secretary of Agriculture in his order dated February 17, 1937, and had petitioner applied the rates prescribed in said order to its volume of business as shown in the table set forth below. It is understood by both parties to this cause that petitioner does not concede that the live-[fol. 369] stock resold or reweighed for the purpose of sale is business from which petitioner should derive revenues through the charging of the rates prescribed by the Secretary in his order dated February 17, 1937, or that the estimated revenues from resales totaling \$10,965.00 as shown in the following tabulation could be collected in the event effort to collect is made by petitioner.

Revenues¹

| | 1935 Volume | Rate in Sec'y's Order | 1935 Amount Produced | 1936 Volume | Rate in Sec'y's Order | 1936 Amount Produced |
|--------------------------|----------------|-----------------------------|----------------------------|----------------|-----------------------------|----------------------------|
| Cattle: | | | | | | |
| Rail..... | 309,632 | .30 | \$92,889.60 | 309,818 | .30 | \$92,945.40 |
| Truck-ins..... | 128,249 | .35 | 44,887.15 | 134,969 | .35 | 47,239.15 |
| Resales..... | 56,000 | .15 | 8,400.00 | 56,000 | .15 | 8,400.00 |
| Bulls..... | 1,051 | 1.00 | 1,051.00 | 1,382 | 1.00 | 1,382.00 |
| Calves: | | | | | | |
| Rail..... | 24,160 | .20 | 4,832.00 | 23,185 | .20 | 4,637.00 |
| Truck-ins..... | 43,230 | .25 | 10,807.50 | 39,398 | .25 | 9,849.50 |
| Resales..... | 3,000 | .10 | 300.00 | 3,000 | .10 | 300.00 |
| Hogs: | | | | | | |
| Rail..... | 18,656 | .12 | 2,238.72 | 15,879 | .12 | 1,905.48 |
| Directs..... | 84,393 | .06 | 5,058.22 | 215,871 | .25 | 12,322.25 |
| Truck-ins..... | 132,417 | .14 | 18,538.38 | 140,941 | .14 | 19,731.74 |
| Resales..... | 250 | .06 | 15.00 | 250 | .06 | 15.00 |
| [fol. 370] | | | | | | |
| Sheep: | | | | | | |
| Rail..... | 1,955,166 | .07½ | 146,637.45 | 2,197,814 | .07½ | 164,836.05 |
| Truck-ins..... | 76,084 | .10 | 7,608.40 | 105,282 | .10 | 10,528.20 |
| Resales..... | 75,000 | .03 | 2,250.00 | 75,000 | .03 | 2,250.00 |
| Horses and mules. | | | | | | |
| | 10,950 | .35 | 3,832.50 | 6,981 | .35 | 2,443.35 |
| Hay, ewt. on fence | 171,113 | .50 | 85,556.50 | 159,408 | .50 | 79,704.00 |
| Hay, " fed.... | 16,557 | .60 | 9,934.20 | 14,160 | .60 | 8,496.00 |
| Corn, bu..... | 10,181½ | .45 | 4,581.68 | 13,977 | .45 | 6,289.65 |
| Straw, bales.... | 22,559 | .40 | 9,028.60 | 28,197 | .40 | 11,278.80 |
| Misc. feed..... | 94,475* | | 629.20 | 183,579* | | 1,222.64 |
| Misc. Revenues..... | | | 69,516.69 | | | 72,354.22 |
| Total..... | | | | | | |
| | | | \$528,587.75 | | | \$558,760.44 |

¹ This table shows the revenues which would have been received in 1935 and in 1936 by the Denver Union Stock Yard Company had the company charged the rates prescribed by the Secretary of Agriculture in his order of February 17, 1937, and applied the rates to the volume of business handled by it in each of these years. The company does not now assess a charge against livestock resold and reweighed for the purpose of sale, except that which is handled through the Commission Division. The order of the Secretary contemplates that such a charge shall be made. The records of the company do not reveal the number of head of livestock resold or reweighed for the purpose of sale. The volume of this class of business for the years 1935 and 1936 has been assumed to be the same as that used by the Secretary as a rate factor in his order. The revenues above stated from cattle, calves, hogs, sheep, horses and mules reflect the full volume of each of these species received and sold during January in each of the years 1935 and 1936. No allocation has been made [fol. 371] or attempted to show the volume of sales during such period at or caused directly by the stock show.

Of the 22,559 bales of straw shown as the amount sold by petitioner in 1935, 5,413 bales were sold to exhibitors and others during the stock show week in January, 1935. Of the 28,197 bales of straw shown as the amount sold by petitioner in 1936, 11,876 bales were sold to exhibitors and others during stock show week in January, 1936.

The \$629.20 profit shown to have been received from the sale of miscellaneous feed in 1935 and the \$1,222.64 profit so received in 1936 was derived from the sale of miscellaneous feed to exhibitors and others during stock show week in January of the respective years.

II

It is further stipulated and agreed by and between the parties to this cause that the facts and figures contained in

the following table, as qualified by the footnote appended thereto, are a true and correct statement of the expenses for the years 1935 and 1936, respectively, incurred by petitioner in the conduct of its stockyard business as determined in accordance with the criteria of reasonableness adopted by the Secretary of Agriculture in determining such expenses for the years 1930 to 1934, inclusive, as shown by his order of February 17, 1937. It is understood by both parties to this cause that petitioner does not concede that the Secretary has adopted the proper criteria for determining reasonable expenses.

[fol. 372]

Expenses¹

| | 1935 | 1936 |
|---------------------------------|--------------------|---|
| Miscellaneous expenses | \$267,794.34 | \$276,694.25 ² |
| Increase in payroll | 13,075.00 | 11,979.00 (11 mos., 1 mo. included in miscellaneous expenses) |
| Social Security Tax | 7,388.00 | 7,388.00 |
| Repairs as per order | 15,300.00 | 15,300.00 |
| Depreciation as per order | 35,000.00 | 35,000.00 |
| Federal income tax | 19,802.92 | 24,103.95 |
| | <hr/> \$358,360.26 | <hr/> \$370,465.20 |

¹ The reasonable expenses incurred by the Stockyard Company in earning the revenues set forth in the preceding table have been arrived at through an analysis of the expenses as actually incurred by the Company and modified according to the principles applied in the order. The Company will have certain expenses in the future which it did not incur in the past. In order to use the two years 1935 and 1936 for the purpose of gauging the earning power of the rates prescribed in the order, these additional expenses have been added to those determined as reasonable. These additional expenses consist of an increase in payroll of 8%, effective December 1, 1936. The amount which has been included on account of this item is that which the Company sets forth in a statement made at the time the case was argued before the Secretary. Social Security taxes are an expense which will be incurred in the future. The amount included on account of this item is that computed by respondent and set forth in a written statement furnished at the time the case was argued. Expenses on account of repairs as included in the expense account are the amount found by the Secretary to be reasonable and shown in the order. The amount on account of depreciation reserve is the amount found by the Secretary to be reasonable. The federal income [fol. 373] tax payable and included in the expense account has been computed on the basis of revenues and expenses found to be reasonable for the years 1935 and 1936.

² This amount does not include \$1,708.77 paid by petitioner in 1937 on account of taxes for 1936.

III

It is further stipulated and agreed by and between the parties to this cause that the facts and figures for the years 1935 and 1936, respectively, contained in the following table are a true and correct statement of the revenues as shown in the table on page 2 of this stipulation, the reasonable expenses as shown in the table on page 3 of this stipulation, the net operating income computed from those figures, and the resulting rate of return on \$2,792,700, the fair value of petitioner's property used and useful in the rendition of stockyard services as found by the Secretary of Agriculture in his order dated February 17, 1937. It is understood by both parties that petitioner does not concede that \$2,792,700 is the fair value of petitioner's used and useful property devoted to the rendering of stockyard services.

| [fol. 374]. | 1935 | 1936 |
|--|--------------|--------------|
| Revenues (resale and reweighs included)..... | \$528,587.75 | \$558,760.44 |
| Total operating expenses, including taxes..... | \$358,360.26 | \$370,465.20 |
| Net operating income..... | \$170,227.49 | \$188,295.24 |
| Rate of return on \$2,792,700..... | 6.10% | 6.74% |

Robert G. Bosworth, Attorney for the Plaintiff.
 Robert H. Jackson, Assistant Attorney General.
 Wendell Berge, Attorneys for the Defendant.

[fol. 375] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

SUPPLEMENTAL STIPULATION "A" RE EXPENSES INCURRED
 BY PLAINTIFF, ETC.—Filed October 8, 1937

It is Hereby Stipulated and Agreed by and between the parties to this cause:

I

That the expenditures already incurred and paid in connection with the proceeding known as "Secretary of Agri-

culture v. The Denver Union Stock Yard Company, Respondent," being BAI Docket 450, before the Secretary of Agriculture, and exclusive of any costs and expenses of this pending proceeding in this Court, other than the premium of \$500. on the impounding bond on file herein, is \$24,654.27, and that said expenses so incurred and paid cover a period from January 1, 1935 to June 1, 1937, and are not reflected in Government Exhibit 38 being the audit of Government auditor Bufkin, nor in any other of the exhibits introduced before the Examiner.

II

That the reasonable estimated costs and expenses of the pending proceeding in this Court total \$15,785.00 itemized as follows:

| | |
|--|-------------|
| [fol. 376] Printing of abstract and index (852 pgs.) and brief | \$1,500.00 |
| Impounding expense, extra labor printing of forms, etc.: | |
| 5 mos. (light season at \$205) | \$1,025.00 |
| 4 mos. (heavy season at \$315) | 1,260.00 |
| Attorney fees, travel expense, extra stenographic labor, etc. | 2,285.00 |
| | 12,000.00 |
| | <hr/> |
| | \$15,785.00 |

III

That the total of the costs and expenses as stated in the two preceding paragraphs is \$40,439.27.

IV

It is understood by both parties to this cause that the Government does not concede that the facts and figures set out in this stipulation are relevant or material evidence in this cause.

Robert G. Bosworth, Norman A. Hutchinson, Attorneys for Plaintiff. Robert H. Jackson, Wendell Berge, Attorneys for Defendants.

[fol. 377] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION "B"—RE COMPARISON OF INCOME, ETC.—Filed
October 18, 1937

It is hereby stipulated and agreed between the parties to this cause that the facts and figures contained in the attached Exhibit, marked for identification "Plaintiff's Exhibit No. 1" are a true and correct statement of the adjusted earnings of the plaintiff for the period therein set forth, and that the said Exhibit may be introduced in evidence in this cause subject to the objections of defendants as to the materiality and relevancy of the facts and figures therein set forth, all of which objections may be argued by defendants in their brief or briefs and considered by the Court the same as though formal objection had been made thereto in open court.

II

It is further stipulated and agreed by and between the parties to this cause that the figures contained in the attached Exhibit, marked for identification "Plaintiff's Exhibit No. 2" and covering the periods therein stated, are a true and correct statement of the matters and things therein [fol. 378] set forth, and that said Exhibit may be introduced in evidence in this cause subject to the objections of defendants as to the materiality and relevancy of the facts and figures therein set forth, all of which objections may be argued by defendants in their brief or briefs and considered by the Court the same as though formal objection had been made thereto in open court.

Robert G. Bosworth, Norman A. Hutchinson, Attorneys for Plaintiff. Robert H. Jackson, Wendell Berge, Attorneys for Defendants.

[fol. 379] PLAINTIFF'S EXHIBIT NO. 1.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
DISTRICT OF COLO.

In Equity. No. 10913

THE DENVER UNION STOCK YARD Co., Plaintiff,

vs.

UNITED STATES OF AMERICA and THE SECRETARY OF AGRICUL-
TURE, Defendants

Exhibit Showing Higher Income of Plaintiff During January 1937 Compared to
an Average of December 1936 and February 1937, Caused by the Stock Show
Held in January 1937, and Bringing up to Date Respondent's (Plaintiff's)
Ex. No. 13 and No. J.

| | |
|---|--------------|
| Net adjusted earnings for December 1936..... | \$6,935.57 |
| Net adjusted earnings for February 1937..... | 8,642.93 |
| | |
| Total..... | \$15,578.50 |
| Average per month..... | 7,789.25 |
| Net adjusted earnings for January 1937..... | \$22,030.97 |
| Excess of January over December—February average..... | \$14,241.72 |
| Total excess on above basis for January over previous December and following February for six years 1930 to 1935 inclusive as shown by Respondent's Ex. 13..... | \$69,552.84 |
| Total excess for January 1936 over December 1935 and February 1936 as shown by Respondent's Ex. J..... | 17,071.68 |
| Total excess for January 1937 as shown above..... | 14,241.72 |
| | |
| Total for eight years 1930 to 1937, incl..... | \$100,866.24 |
| Average per year for eight years..... | 12,608.28 |

[fol. 380] PLAINTIFF'S EXHIBIT No. 2.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
DISTRICT OF COLO.

In Equity. No. 10913

THE DENVER UNION STOCK YARD Co., Plaintiff,
vs.

UNITED STATES OF AMERICA and THE SECRETARY OF AGRICUL-
TURE, Defendants

Exhibit Showing Higher Income of Plaintiff From the Sale of Feed and Bedding and From the Marketing (Yardage) Charge on Livestock Sold During the Last Two Weeks of January, 1937 (The Stock Show Period) Compared to an Average of the Last Two Weeks of December, 1936, the First Two Weeks of January, 1937, and the First Two Weeks of February, 1937.

| For Two Weeks Ending | Hay Profit | Corn Profit | Bedding Profit | Misc. Grain Profit | Total |
|---|---------------|----------------|-------------------|-----------------------|-------------|
| Dec. 29, 1936..... | \$2009.85 | 692.24 | 448.40 | 3.52 | |
| Jan. 14, 1937..... | 2676.99 | 694.29 | 1064.08 | 36.74 | |
| Feb. 14, 1937..... | 2282.29 | 476.80 | 583.74 | 13.52 | |
| Average for each two weeks..... | 2323.06 | 621.11 | 698.74 | 17.92 | |
| Jan. 30, 1937..... | 9317.13 | 694.96 | 3335.59 | 815.75 | |
| Excess for two weeks ending Jan. 30, 1937. | 6994.07 | 73.75 | 2636.85 | 797.83 | \$10,502.50 |

| Marketing Charge | | | | | | |
|---------------------------------------|-----------|----------|-----------|-----------|-------------------|-------|
| For Two Weeks Ending | Cattle | Calves | Hogs | Sheep | Horses & Mules | Total |
| Dec. 29, 1936.. | \$5985.65 | \$902.31 | \$3978.26 | \$3043.78 | \$42.70 | |
| Jan. 14, 1937.. | 4848.10 | 563.01 | 3290.06 | 5607.42 | 14.00 | |
| Feb. 14, 1937.. | 4271.25 | 526.63 | 1954.94 | 4686.50 | 78.75 | |
| Average for each two weeks..... | 5035.00 | 663.98 | 3074.42 | 4445.90 | 45.15 | |
| Jan. 30, 1937.. | 10408.75 | 1310.84 | 2890.72 | 6368.52 | 309.75 | |

| Deficit | | | | | | |
|--|---------|--------|--------|---------|--------|-----------|
| Excess for two weeks ending | | | | | | |
| Jan. 30, 1937. | 5375.75 | 646.86 | 183.70 | 1922.62 | 264.60 | 8,024.13 |
| Total excess from feed, bedding and marketing..... | | | | | | 18,526.63 |

[fol. 381]

**Higher Operating Expense During the Last Two Weeks of January, 1937
(Stock Show Week) Than During Other Periods Shown.**

| | |
|--|------------------------|
| Labor costs for last two weeks of December, 1936..... | \$7,453.96 |
| Casualty insurance..... | 223.62 |
| Labor costs for first two weeks of January, 1937..... | 6,424.63 |
| Casualty insurance..... | 160.62 |
| Labor costs for first two weeks of February, 1937..... | 5,776.56 |
| Casualty insurance..... | 144.42 |
| Average of labor costs for two weeks periods shown..... | 6,551.72 |
| Casualty insurance..... | 176.22 |
| Total..... | <u>\$6,727.94</u> |
| Labor costs for last two weeks of January, 1937..... | \$9,572.03 |
| Casualty insurance..... | 239.30 |
| Total..... | <u>9,811.33</u> |
| Excess labor costs for last two weeks of Jan. 1937..... | 3,083.39 |
| Other Additional Expense Last Two Weeks Jan. 1937: | |
| Electric light and power..... | 226.40 |
| Water..... | 196.60 |
| Current Yard Expense..... | 203.26 |
| Office..... | 55.00 |
| Total..... | <u>681.26</u> |
| Total higher labor and miscellaneous..... | 3,764.65 |
| Total higher average income shown on sheet one..... | <u>18,526.63</u> |
| Total higher net income after operating expense for last two weeks of January, 1937, compared to an average of the last two weeks of December, 1936; the first two weeks of January, 1937, and the first two weeks of February, 1937..... | <u>\$14,761.98</u> |

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IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLORADO

THE DENVER UNION STOCK YARD
COMPANY, a Corporation,

Plaintiff,
vs.

UNITED STATES OF AMERICA AND
SECRETARY OF AGRICULTURE,

Defendants.

IN EQUITY

No. 10913

ABSTRACT OF EVIDENCE

VOLUME I

GOVERNMENT'S TESTIMONY

INDEX TO SUBJECTS

| | Page |
|---|---|
| Additions and Betterments | 581 |
| Advertising | 51, 437, 441 |
| Allocation of facilities | 44, 45, 59, 495, 600 |
| Assignment of Pens | 36, 39, 494, 495, 600 |
| Benefit of Market to Producer | 20, 37, 47, 57, 62, 63, 500, 504 |
| User should pay | 405, 406, 503, 706 |
| Chutes and Alleys: | |
| Government position | 11, 12, 31, 33, 54, 73 |
| Respondent's position | 491, 777, 778, 783, 784 |
| Classification of Property, A and B | 6 |
| Competitive Character of Market | 273, 283, 284, 420, 422, 424, 425 |
| Condition Percent | 105, 106, 112, 137, 138, 145, 147, 151, 667, 729 |
| Hyder's Knowledge of Facilities | 668, 669, 670, 671, 729 |
| Sewer and Water Facilities | 137, 138, 147, 668, 671 |
| Cost of Service to Producer | 39, 40, 281 |
| Depreciation: | |
| Allowed | 14, 179 |
| Will Not Return Investment | 227, 228 |
| Basis of Government Method | 144 |
| Hyder's Suggested Plan for Depreciation Reserve | 680, 686, 691 |
| Internal Revenue Department Requires | |
| Straight Line Method | 222, 226 |
| Investment of Sinking Fund | 208, 212, 215, 759 |
| Investment of Sinking Fund in Plant | 212, 215 |
| Service Value Not Considered | 150, 669 |
| Sinking Fund Method | 180, 181, 185, 187, 213, 216, 228, 682, 683, 685, 722, 759 |
| Straight Line Depreciation | 185, 190, 191, 208, 209, 217-222, 686 |
| Bufkin's Testimony on | 179-188, 191, 208, 209, 217-224 |
| Donations, Subscriptions, etc... | 158, 163, 172, 177, 197-202, 205, 535-544 |
| Allowance for | 197, 207 |
| Question is one of abuse | 158, 163, 164 |
| Reasonableness of | 184, 206, 207 |
| Total of | 206 |
| Dotsero Cut-Off | 90 |
| Eminent Domain: | |
| Yard Company does not have right of | 69, 116, 467, 749 |
| Freight Benefits | 601, 652, 653 |
| Going Concern Value: | |
| Buyer-Seller Example | 708 |
| Definition of | 664, 665, 669 |
| Elements Affecting | 705, 706, 730, 731 |

[Vol. I of Abstract, pages 1 to 291 inclusive.]

[Vol. II of Abstract, pages 292 to 820 inclusive.]

| | Page |
|---|--|
| Expense Incurred in Establishing Denver Market..... | 454-461, 706 |
| Highest and Best Use is Stockyards..... | 115, 116, 315, 343, 354, 365 |
| Income Not Considered in Land Valuation..... | 338, 372 |
| Land Valued as Naked Land..... | 83, 103, 115, 132, 133, 153, 313, 352, 357, 365, 383 |
| Method of Computation | 705, 707, 737 |
| Relation to Physical Plant Value | 664, 703 |
| Reproduction New Value | 142, 143 |
| Special Use, Land Not Valued for | 115, 153, 315, 343, 354, 365, 375, 396 |
| Streets, Effect of Lack of | 97, 103, 115, 322, 386, 387 |
| Value Found by Pexton | 463 |
| Value Found by Hyder | 710, 737 |
| Valued as Naked Land | 83, 103, 115, 132, 133, 313, 352, 357, 365, 383 |
| Water System | 45, 61, 63, 106, 137, 147 |
| Zoning Ordinances | 83, 95, 314, 363, 377, 385 |
| Life Tables | 144 |
| Management of Company | 498, 508, 776 |
| Manure Disposal Problem..... | 58, 76, 466, 468, 478, 479, 590, 650, 784 |
| Operating Expenses: | |
| Allowed | 176 |
| Eliminated | 175, 176, 177, 518, 534, 535-544 |
| Railroad Rates | 556, 652, 653 |
| Railroad Tackage and Facilities: | |
| Christensen's Reasons for Excluding | 10, 11, 26, 28, 34, 37 |
| Facilities Described | 10, 12, 13, 20, 25, 31, 33, 72, 89, 491, 623 |
| Leasing of Tackage | 23, 26, 30, 622, 623, 624, 781 |
| Necessity for Tackage and Facilities | 10, 11, 21, 22, 23, 48, 491, 492, 618, 620, 655, 782, 783 |
| Respondent's Exception on Ground of Prior Decision..... | 13 |
| Yardmaster's Office | 31 |
| Western Weighing and Inspection Bureau | 66 |
| Rate Expense: | |
| Interstate Commerce Commission | 176, 534 |
| Packers and Stockyards | 176, 282, 518 |
| Rate of Return: | |
| Average Earnings not Considered by Dr. Dozier..... | 276 |
| Bond and Stock Yields..... | 237, 238, 240, 258, 260, 261, 263, 267, 270, 273, 745 |
| Call price effect | 245, 264 |
| Comparative Securities | 260, 261, 745 |
| Competition and Hazards | 273, 275, 283, 284, 286, 287 |
| Dozier's Theory of Rate Making..... | 233, 245 |

[Vol. I of Abstract, pages 1 to 291 inclusive.]

[Vol. II of Abstract, pages 292 to 820 inclusive.]

| | Page |
|---|---|
| Fair Rate 6½% to 7% | 234-243, 271-273, 281 |
| Fair Rate 8% | 753, 760 |
| Greater Risks Justify Higher Rates | 267, 747, 760, 770, 771 |
| No Allowance for Amortization of Bonds | 289 |
| Underwriting Costs | 754, 757 |
| Receipts at Denver | 102, 414, 416, 417, 418-435, 557, 560, 568, 588, 794, 797 |
| (See also Supplies of Livestock to Denver) | |
| Are Seasonal | 43, 287, 416, 417, 557, 560, 787, 789 |
| Reproduction New: | |
| Company Labor | 111, 140, 141, 533 |
| General Overheads | 143, 665 |
| Government Basis of Valuation | 105, 111, 140, 142, 143 |
| Indirect Construction Costs in General | 143, 665 |
| Period of Construction | 140 |
| Respondent's Basis of Valuation | 667, 670, 671 |
| Stipulation that Respondent Accepts Government Figures on Reproduction New Value | 139 |
| Reweigh Charges | 501, 507, 508, 596, 599 |
| Scope of Hearing and Respondent's Objections | 13, 177, 291 |
| Securities Market and Price | 234, 246, 260, 263, 267, 273, 276 |
| Securities of Denver Union Stock Yard Company | 245-249, 273, 750, 757 |
| Services to Producers for which No Charge is Made | 39, 414, 451, 498, 776 |
| Stadium Property: | |
| Christensen's Reasons for Excluding | 15 |
| Described | 13 |
| Exceptions by Respondent Based on Prior Decision | 13 |
| Necessity for Stadium and Other Property | 49, 50, 447, 548 |
| Stock Show: | |
| Allocation Difficult due to Complexity of Business | 647 |
| Advertising Legitimate | 51, 441 |
| Benefit to Denver 49, 51, 292, 293, 302, 407-409, 438, 441, 543, 575 | 50 |
| Christensen's Reasons for Exclusion | 50 |
| Earnings Due to Show | 49, 409, 438, 443, 445, 548, 608, 644, 647 |
| Fair to Expect Patrons to Bear Cost of Show | 155, 411, 648 |
| General | 13, 49, 156, 301, 407, 436, 437, 440, 449, 450, 547, 572 |
| Impossible to Segregate Benefit of Show | 438, 647 |
| Income Not Eliminated | 196, 608, 609 |
| Livestock Sold as Result of Show | 49, 51, 294, 302, 308, 402, 403, 407, 408, 441-443, 548, 644 |
| Proper Stockyard facility | 447, 644 |

[Vol. I of Abstract, pages 1 to 291 inclusive.]
 [Vol. II of Abstract, pages 292 to 820 inclusive.]

| | Page |
|--|--|
| Show Beneficial to Producers and Industry | 49, 51, 52, 156, 292, 302, 303, 401, 407, 411, 412, 437, 441, 442, 448, 547, 550, 575, 610, 611, 645 |
| Supplies of Livestock to Denver: (See also Receipts at Denver) | |
| Sources of | 410, 794, 797, 798, 799, 804, 814, 817 |
| Through Business, Charge on | 40, 414, 451 |
| Transportation Facilities Not Included in Rate Base. (See Railroad Tackage) | |
| Transit Privileges | 90, 652, 653, 821 |
| Truck-In Division | 70, 464, 475, 485 |
| Used or Useful Property: | |
| Christensen's Schedule used by Government | 174, 179 |
| Zone 1 | 124, 131, 326, 350, 360, 367, 393, 525 |
| Zone 2 | 73, 326, 368, 477, 525 |
| Zone 3 | 120, 121, 321, 363, 466, 476, 526, 583, 625 |
| Zone 4 | 122, 123, 320, 352, 387, 468, 470, 472, 487, 531, 617, 618 |
| Zone 5 | 57, 124, 127, 318-320, 375, 463, 486, 615 |
| Zone 6 | 130, 322, 463, 468, 485, 614 |
| Zone 7 | 129, 135, 136, 323, 463 |
| Zone 8 | 131, 328, 488 |
| Zone 9 | 132, 315, 316, 324, 359, 488, 625 |
| Zone 10 | 489, 623 |
| Exclusions: | |
| Blacksmith Shop | 16, 65, 67 |
| Christensen's Schedule Used | 174, 179 |
| Club Building | 16, 49, 488, 625 |
| Exchange Building Space | 47, 66 |
| Expansion Land | 61, 69, 70, 463, 464, 470, 527, 529, 585, 777 |
| General | 175 |
| Feed Lots | 15, 60, 592 |
| General | 174, 179, 779 |
| Murphy Barn | 132, 315, 359, 396 |
| River Easement | 55, 490, 617 |
| Yardage Charges: | |
| Division of Burden between Producer and Trader | 405, 503, 549 |
| Privilege of the Market | 39, 453, 498, 730 |
| Through Shipments | 414, 451 |
| To Traders | 41, 435, 497, 549, 550, 776 |
| Trying the Market | 414, 951 |
| Yardage Charged on Each Sale | 39, 40, 502 |
| Yard Traders: | |
| Benefit of Market to Producer | 20, 37, 47, 57, 62, 63, 500, 504 |
| Essential to Producer | 41, 48, 295, 298, 299, 305, 398, 399, 405, 409, 410, 554, 602, 603 |

[Vol. I of Abstract, pages 1 to 291 inclusive.]
 [Vol. II of Abstract, pages 292 to 820 inclusive.]

| | Page |
|---------------------------------|---|
| General | 172, 296, 297, 300, 304, 400, 404, 405, 410, 414, 503, 508, 510-513, 549, 550, 555, 556, 557, 597, 598, 604, 627 |
| Necessary to Market | 405, 409, 497, 505, 507, 549, 601 |
| Revenues possible from | 501, 502, 503, 599 |
| Reweigh Charges | 501, 507, 508, 596, 597, 599 |
| Strike | 513, 627, 787 |
| User of Market should pay | 405, 406, 503, 706 |
| Working Capital | 228, 772, 773 |
| Exclusions | 228, 772 |

[Vol. I of Abstract, pages 1 to 291 inclusive.]
 [Vol. II of Abstract, pages 292 to 820 inclusive.]

INDEX TO EXHIBITS

| | Page |
|--|-------|
| Government No. 1 —Notice of posting of Denver Union Stock Yards as public market | 2 |
| Government No. 2 —Tariffs numbered 1, 2, and 3 of Denver Union Stock Yard Co. | 3 |
| Government No. 3 —Tariffs in effect at Kansas City, Omaha, Sioux City and St. Joseph stockyards..... | 3 |
| Government No. 4 —Findings, conclusion and order in St. Joseph Stock Yard case | 3 |
| Government No. 5 —Christensen—Classification of property..... | 8 |
| Government No. 6 —Christensen—Classification of property..... | 8 |
| Government No. 7 —Christensen—Classification of property..... | 8 |
| Government No. 8 —Christensen—Maps of Respondent's property | 9 |
| Government No. 9 —Christensen—Maps of Respondent's property | 9 |
| Government No. 10 —Christensen—Maps of Respondent's property | 9 |
| Government No. 11 —Christensen—Diagram of Exchange Building and Chute House | 17 |
| Government No. 12 —Christensen—Pamphlet on Yard Company's Not Used and Useful Property..... | 18-19 |
| Government No. 13 —Christensen—Photostatic copy of Drawing No. 37123 | 18 |
| Government No. 14 —Christensen—Photostatic copy of Drawing No. 51542 | 18 |
| Government No. 15 —Christensen—Photostatic copy of Drawing No. 37770 | 18 |
| Government No. 16 —Christensen—Photostatic copy of contract covering Unit No. 122 | 18 |
| Government No. 17 —Christensen—Photostatic copy of Drawing No. 51576 | 18 |
| Government No. 18 —Christensen—Photostatic copy of Drawing No. 51454 | 19 |
| Government No. 19 —Christensen—Photostatic copy of Agreement of February 23, 1932 | 19 |
| Government No. 20 —Zelinski—Zone Map of Stock Yard Property | 82 |
| Government No. 21 —Zelinski—Map of Yards and Surroundings | 83 |
| Government No. 22 —Zelinski—Denver Zone Map and Ordinance | 83 |
| Government No. 23 —Zelinski—Land Appraisal Report | 105 |
| Government No. 24 —Zelinski—Map of Water and Sewer Facilities (offered and withdrawn)..... | 107 |
| Government No. 25 —Zelinski—Map of Water and Sewer Facilities (offered and withdrawn)..... | 107 |
| Government No. 26 —Zelinski—Tabulation of Changes in Report | 109 |
| Government No. 27 —Zelinski—Additions to Sewer and Water Systems | 109 |
| Government No. 28 —Zelinski—Vol. I, Land Appraisers Report | 111 |
| Government No. 29 —Zelinski—Reproduction Tabulation | 111 |

[Vol. I of Abstract, pages 1 to 291 inclusive.]

[Vol. II of Abstract, pages 292 to 820 inclusive.]

| | Page |
|---|---------------|
| Government No. 30 —Zelinski—Reproduction Tabulation | 111 |
| Government No. 31 —Zelinski—Company Work in Reproduction..... | 112 |
| Government No. 32 —Zelinski—Condition percent January 1, 1935 | 113 |
| Government No. 33 —Zelinski—Areas of Services and Facilities..... | 113 |
| Government No. 34 —Zelinski—Wholesale Price Comparisons..... | 114 |
| Government No. 35 —Zelinski—Construction Cost Curve..... | 114 |
| Government No. 36 —Zelinski—Tabulation showing yearly aver- age wages | 114 |
| Government No. 37 —Zelinski—Schedule of Prices and Materials | 149 |
| Government No. 38 —Bufkin—Report of Audit | 168 |
| Government No. 39 —Bufkin—Folder of Working Sheets of Audit Report | 169 |
| Government No. 39a—Bufkin—Profit and Loss figures, 1930..... | 169 |
| Government No. 39b—Bufkin—Profit and Loss figures, 1931..... | 169 |
| Government No. 39c—Bufkin—Profit and Loss figures, 1932..... | 169 |
| Government No. 39d—Bufkin—Profit and Loss figures, 1933..... | 169 |
| Government No. 39e—Bufkin—Profit and Loss figures, 1934..... | 169 |
| Government No. 40 —Bufkin—Deeds, Leases and Agreements of Denver Union Stock Yard Company..... | 170 |
| Government No. 41 —Bufkin—Supplement to Audit for Rate Making | 173 |
| Government No. 41a—Bufkin—Corrections in Audit | 173 |
| Government No. 42 —Bufkin—Report on Working Capital re- quirements | 173 |
| Government No. 43 —Bufkin—Study of dealer purchases, 1930- 1934 | 224 |
| Government No. 43a—Bufkin—Number of "Plants" | 224 |
| Government No. 44 —Zelinski—Condition percent of Cattle Division | 230 |
| Government No. 45 —Dozier—Yield of Public Utility Bonds | 232, 244, 28 |
| Government No. 46 —Dozier—Livestock population in certain States | 232, 244, 289 |
| Government No. 47 —Dozier—Statistics on Livestock for 1930.. | 244 |
| Government No. 48 —Dozier—Statistics on Livestock for 1931— | 244 |
| Government No. 49 —Dozier—Statistics on Livestock for 1932.. | 245 |
| Government No. 50 —Dozier—Statistics on Livestock for 1933.. | 245 |
| Government No. 51 —Dozier—Statistics on Livestock for 1934.. | 245 |
| Government No. 52 —Dozier—Booklet on Crops and Markets, January, 1935 | 245 |
| Government No. 52a—Dozier—Booklet on Crops and Markets, February, 1935 | 245 |
| Government No. 52b—Dozier—Booklet on Crops and Markets, March, 1935 | 245 |

[Vol. I of Abstract, pages 1 to 291 inclusive.]

[Vol. II of Abstract, pages 292 to 820 inclusive.]

| | Page |
|---|--------------------|
| Government No. 52c—Dozier—Booklet on Crops and Markets, April, 1935 | 245 |
| Government No. 53d—Dozier—"Crops and Markets" for May, 1935 | 290 |
| Government No. 53 —Dozier—Report on direct buying | 290 |
| Government No. 54 —Proposed cattle pens | 614 |
| Government No. 55—Blueprint of proposed additions in Zone 5.616 | |
| Government Nos. 56 Issues of "Record Stockman," January 2 to 56q—to January 26, 1935 | 640, 641 |
| Government No. 58 —Dozier—List of Stock Yard Companies..... | 290 |
| Respondent's No. 1 —Airplane Photograph of Respondent's property | 2 |
| Respondent's No. 2 —Article by Dr. John R. Mohler on Stock Shows | 54 |
| Respondent's No. 3 —Ivins—Report of Appraisers | 329, 398 |
| Respondent's No. 4 —Newcomb—Map of Yard Company's property | 367 |
| Respondent's No. 5 —Pexton—20-year Denver sales | 416, 641 |
| Respondent's No. 6 —Pexton—Monthly Receipts, Cattle, Sheep and Hogs, 1930-1934 | 416, 419 |
| Respondent's No. 7 —Pexton—Loading per car, cattle, sheep and hogs, 1933-1934 | 418, 419, 641 |
| Respondent's No. 8 —Pexton—Report on Government purchases of sheep | 427, 428, 641 |
| Respondent's No. 9 —Pexton—Report on Government purchases of cattle | 427, 428, 641 |
| Respondent's No. 10 —Pexton—U. S. Dept. of Agriculture live- stock outlook | 428, 436, 641 |
| Respondent's No. 11 —Pexton—Estimated revenues, 1935-1936 | 434, 436, 641 |
| Respondent's No. 12 —Pexton—January earnings at Denver | 442, 450, 641 |
| Respondent's No. 13 —Pexton—December, January, and February earnings | 443, 450, 641 |
| Respondent's No. 14 —Pexton—Income from Stadium and Stock Show | 446, 450, 641 |
| Respondent's No. 15 —Pexton—Development cost of Denver market | 454, 463, 641 |
| Respondent's No. 16 —Pexton—Construction progress map | 464, 641 |
| Respondent's No. 17 —Pexton—1930 case, property allowed in rate base | 471, 491, 641 |
| Respondent's No. 18 —Pexton—Copies of correspondence regarding manure dumping | 477, 491, 641 |
| Respondent's No. 19 —Pexton—Plan of proposed Race Court cattle pens | 484, 491, 612, 641 |
| Respondent's No. 20 —Pexton—Airplane picture showing used and useful property | 489, 491, 641 |

[Vol. I of Abstract, pages 1 to 291 inclusive.]
 [Vol. II of Abstract, pages 292 to 820 inclusive.]

| | Page |
|---|---------------|
| Respondent's No. 21 —Pexton—Lands leased to Railroads and others | 493, 514, 641 |
| Respondent's No. 22 —Pexton—Results of assessing reweigh charges | 501, 514, 641 |
| Respondent's No. 23 —Pexton—Transit cattle at Denver 4 months of 1935 | 505, 514, 641 |
| Respondent's No. 24 —Pexton—Effect of 10% and 20% reduction in rates for 1930..... | 514, 518, 641 |
| Respondent's No. 25 —Pexton—Effect of 10% and 20% reduction in rates for 1931..... | 514, 518, 641 |
| Respondent's No. 26 —Pexton—Effect of 10% and 20% reduction in rates for 1932..... | 514, 518, 641 |
| Respondent's No. 27 —Pexton—Effect of 10% and 20% reduction in rates for 1933..... | 514, 518, 641 |
| Respondent's No. 28 —Pexton—Effect of 10% and 20% reduction in rates for 1934..... | 514, 518, 641 |
| Respondent's No. 29 —Pexton—Application of increased labor costs under NRA to earnings of 1930-1933..641 | |
| Respondent's No. 30 —Pexton—Application of increased labor costs under NRA to earnings of 1930-1933..641 | |
| Respondent's No. 31 —Pexton—Application of increased labor costs under NRA to earnings of 1930-1933 | 532, 641 |
| Respondent's No. 32 —Pexton—Adjustment of earnings due to Government livestock purchases..... | 532, 641 |
| Respondent's No. 33 —Pexton—Airplane picture of Yard | 520, 532, 641 |
| Respondent's No. 34 —Pexton—Map of Stockyard area showing river channels | 520, 532, 641 |
| Respondent's No. 35 —Pexton—Land grants to City..... | 521, 532, 641 |
| Respondent's No. 36 —Pexton—Union Pacific tariff effective June 15, 1935 | 544, 641 |
| Respondent's No. 37 —Pexton—Letter regarding Government leases and NRA | 656 |
| Respondent's No. 38 —Hyder—Table of Accrued Depreciation | 672, 738 |
| Respondent's No. 39 —Hyder—Reproduction New Study..... | 673, 738 |
| Respondent's No. 40 —Hyder—Cattle Division accrued depreciation | 673, 738 |
| Respondent's No. 41 —Hyder—Depreciation Straight Line..... | 682, 738 |
| Respondent's No. 42 —Hyder—Fair Annual Depreciation..... | 682, 738 |
| Respondent's No. 43 —Bosworth—Respondent's stocks and bonds | 750, 772 |
| Respondent's No. 44 —Bosworth—Other Stock Yard Companies' stocks and bonds, 1934..... | 751, 772 |
| Respondent's No. 45 —Bosworth—Other Stock Yard Companies' stocks and bonds, 1932..... | 752, 772 |

[Vol. I of Abstract, pages 1 to 291 inclusive.]

[Vol. II of Abstract, pages 292 to 820 inclusive.]

| | Page |
|---|----------|
| Respondent's No. 46 — Bosworth—Respondent's refunding expense | 757, 772 |
| Respondent's No. 47 — Shoemaker—Photographs of Stock Yard land | 780, 787 |
| Respondent's No. 47a — Shoemaker—Photographs of Stock to 471—Yard land | 780, 787 |
| Respondent's No. 48 — Shoemaker—Map, comparable land... Respondent's No. 49 — Shoemaker—Letter to Traders regarding charges | 780, 787 |
| Respondent's No. 50 — Pexton—Tabulation of Accounts Receivable | 791 |

[Vol. I of Abstract, pages 1 to 291 inclusive.]

[Vol. II of Abstract, pages 292 to 820 inclusive.]

INDEX TO WITNESSES

Government Witnesses.

| | Direct | Cross | Redirect | Recross |
|----------------------------|--------|-------|----------|---------|
| Bufkin, H. E. | 164 | 188 | .... | .... |
| Christensen, James C. | 3 | 19 | 75 | .... |
| Collins, Charles E. | 154 | 157 | 162 | 163 |
| Dozier, Howard D. | 231 | 245 | 288 | 288 |
| Harian, C. L. | 793 | 813 | .... | .... |
| Zelinski, John A. | 78 | 114 | 150 | 153 |
| Recalled | 230 | .... | .... | .... |
| Rebuttal | 825 | 828 | .... | .... |

Respondent's Witnesses.

| | Direct | Cross | Redirect | Recross |
|--------------------------|--------|-------|----------|---------|
| Bosworth, Arthur H. | 738 | 759 | .... | .... |
| Eppich, L. F. | 381 | 389 | 396 | .... |
| Resumed .... | ..... | 395 | .... | .... |
| Farr, Harry W. | 546 | 549 | 551 | 553 |
| Hyder, K. Lee | 656 | 711 | .... | .... |
| Ivins, Barclay | 305 | 329 | 352 | .... |
| Jamison, Harry | 398 | 403 | 406 | .... |
| Mitchel, Merle M. | 406 | 410 | 412 | .... |
| Newcomb, Harry W. | 354 | 363 | 380 | .... |
| Recalled | 395 | .... | .... | .... |
| Pace, Charles W. | 292 | 297 | 303 | .... |
| Pexton, L. M. | 412 | .... | .... | .... |
| Recalled | 553 | 557 | .... | .... |
| Resumed .... | ..... | 608 | 642 | 780 |
| Reinhardt, A. | 772 | 774 | .... | .... |
| Shoemaker, J. A. | 776 | 787 | 790 | .... |
| Wolf, Julius | 595 | 604 | 607 | .... |

[Vol. I of Abstract, pages 1 to 291 inclusive.]

[Vol. II of Abstract, pages 292 to 820 inclusive.]

IN THE
**District Court
 Of The United States
 FOR THE DISTRICT OF COLORADO**

THE DENVER UNION STOCK
 YARD COMPANY, a Corporation,
 Plaintiff,

vs.

UNITED STATES OF AMERICA
 and SECRETARY OF AGRICUL-
 TURE,

Defendants.

IN EQUITY

No. 10913

Abstract of
 Evidence in Bureau
 of Animal Industry
 Docket 450,
 Secretary of
 Agriculture, vs.
 Denver Union Stock
 Yard Company,
 Respondent.

**TRANSCRIPT OF RECORD AND
 ABSTRACT OF EVIDENCE**

1 Hearing held at Denver, Colorado, commencing
 June 3, 1935, before:

Examiner J. C. Brooke, Solicitor's Office, U. S.
 Department of Agriculture.

C. E. Miles, Esq., Solicitor's Office, U. S. Depart-
 ment of Agriculture, and M. O. Cooper, Bureau of
 Animal Industry, U. S. Department of Agriculture,
 appeared for the Secretary of Agriculture.

Robert G. Bosworth, Denver, Colorado, with Per-
 shing, Nye, Bosworth & Dick of counsel, appeared
 for the respondent.

2 The hearing was called to order by C. E. Miles
 at 10 A. M. June 3, 1935, being the date noted in
 the Order of Inquiry and Notice of Hearing, and the
 hearing was adjourned until 10 A. M. June 4, 1935.

Trans.

THE CASE FOR THE GOVERNMENT.

Thereupon the following evidence was introduced on behalf of the Secretary of Agriculture:

- 3 Government Exhibit No. 1, being the notice of posting of the Denver Union Stock Yard as a public market.

MR. BOSWORTH: Mr. Examiner I would like to have the record show objections on the part of the respondent, The Denver Union Stock Yard Company. The Denver Union Stock Yard Company objects to this proceeding and to the introduction of any evidence on the ground that:

(1) The Packers and Stockyards Act of 1921 is an unwarranted delegation of legislative authority to the Secretary of Agriculture contrary to the Constitution of the United States, and is therefore void, and that

(2) The Packers and Stockyards Act of 1921, insofar as it attempts to regulate the rates and charges of The Denver Union Stock Yard Company at its stockyards in Denver, Colorado, for services there rendered, for the use of the market there established by it, and for the use of facilities there provided by it, is beyond the power of the United States, being an intra state transaction only indirectly affecting interstate commerce and, therefore, beyond the constitutional power of Congress and void.

- 4 Objection overruled and Government Exhibit No. 1 received.

By stipulation of counsel respondent's Exhibit No. 1, being an airplane photograph of respondent's property, with the land zones as used by Government appraiser shown in various colors thereon for easy recognition, was offered and received in evidence.

Trans.

5 Government Exhibit No. 2, being tariffs numbered 1, 2 and 3, and supplements thereto, was offered and received in evidence.

Government Exhibit No. 3, being the tariffs in effect at Kansas City Union Stockyard, Ogden Union Stockyards, Omaha and Sioux City Stockyards and St. Joseph Stockyards were offered and received in evidence, over the objection of respondent as to their materiality.

MR. BOSWORTH: May I ask, Mr. Examiner, that the Examiner officially place upon record a statement to the effect that without the necessity of asking for specific exceptions each time there is a ruling either for or against either side here that it be taken without question that an exception is saved to the party against whom the ruling goes,—

MR. MILES: Saved as a matter of course.

MR. BOSWORTH: Saved as a matter of course.

MR. EXAMINER: It will be so understood.

7 Government Exhibit No. 4, being certified copies of the findings, conclusion and order of the Secretary of Agriculture in the case against the St. Joseph Stockyards Company, offered and received in evidence over the objection of respondent as to its materiality.

9 James C. Christensen, a witness called by the Government, testified as follows:

Direct Examination.

I reside in Denver, Colorado, and am Field Assistant to the Chief of the Packers and Stockyards Division, Bureau of Animal Industry and have occupied that position for six or seven years. Before that time I was Division Supervisor in the same Department. My duties consist of general supervi-

Trans.

sion and investigations that may be assigned to me by the Chief of the Division. The nature of those investigations are some trade practice matters, investigation of stockyards, stockyards facilities and services and various other matters that may be assigned to me from time to time.

- 11 My qualifications are that after leaving college I was stenographer with a milling company and a coal company for about a year and with the C. B. & Q. R. R. for about two years. I was then with a merchantile company for about a year, when I became stenographer with the M. K. & T. Railway, private secretary to various operating and traffic officials, freight rate clerk, freight livestock claim adjuster and traffic claim agent. My employment with the latter road covered approximately twenty years. I resigned that position and became supervisor of a freight and livestock handling bureau of the T. & P. Ry. Company for about six years, after which I entered the service of the United States Bureau of Markets, where I served as an assistant in marketing livestock and meats, livestock market supervisor and special investigator of the retail meat industry. Thereafter I was assigned to the United States Packers and Stockyards Administration as Division Supervisor and as Field Assistant to the Chief of the Division. My Government experience extends over a period of approximately sixteen years, during which time I have been constantly engaged in the livestock market supervision at public stockyards, have made extensive studies of the facilities and services at Denver, St. Joseph, Kansas City, East St. Louis, Omaha, Sioux City and Cleveland.
- 12 The purpose of the investigations was to furnish information upon which my superior officers could take such action as they deemed proper under the ACT. I have testified as a witness in the previous hearing at Denver; in two hearings at St. Joseph;

Trans.

one at Kansas City, East St. Louis, Omaha and Sioux City, and prepared the reports in connection with Cleveland. I also made an investigation and reports in regard to the facilities and services at the Wichita stockyards.

Recently I was directed to make an investigation 13 and submit a report on the Denver Union Stock Yard. I had already made one investigation and my procedure was practically a duplicate of the procedure in the former case. I have been stationed at the Exchange Building at the Denver Union Stock Yard ever since 1922 and have been almost constantly in and around the stockyards. In the preparation of the report I discussed matters with various officers and employees of the stockyards and with other persons whom I regarded as having information of a reliable character, and made a personal inspection of the facilities and services rendered. I have gone over the property a great many times and observed its uses. During the time I was absent from Denver I was making similar investigations at other yards. I don't remember the exact date when I commenced the study preliminary to making my report but I learned about a year ago that another hearing would probably be held at Denver and I was directed to go ahead and either bring my former report up to date or prepare a new report. I have never considered my report finished, and have observed some slight changes within the last week.

14 Yes, I have prepared a report in two volumes. Volume 1 is a description of the property and states the purposes for which the various operating units are used principally. Volume 2 contains a description of the services.

15 MR. MILES: Did you turn over copies of those two volumes to any officials of the Denver Stockyards?

Trans.

Counsel for respondent stated that one copy of Mr. Christensen's report was received by The Denver Union Stock Yard Company and marked, "Received 9:30 a. m. April 13, 1935."

- 16 (Witness continuing). The Stockyards officials conferred with me with reference to the report, made several suggestions before the report was typed and one recent suggestion was made about Thursday of last week, which has been corrected. I base my corrections on my own observation. We did not go over Volume I in detail as I hope we might have done. Yes, I think possibly there are differences between me and the stockyard officials as to facts shown in this report where we could not agree on the status of certain properties. I have considered
17 all of the suggestions made and so far have not been able to change my report with the exception of the correction made within the past few days, which correction has been inserted as a memorandum in connection with that particular item, unit 114 being pen 4212, designated as manure dump. That correction should apply wherever that pen is referred
18 to in any way as a manure facility.
19 Volume I is not only a description of the property of The Denver Union Stock Yard Company, but it is set up in classified form and the division of the subject is divided into two classes of property.

Yes, sir, it is not only a description, but it is set up in classified form, and the division of the subject is divided into two classes of property: Class A consists of the property and services provided by the stockyards company which are reasonably necessary in that course of commerce whereby livestock passes from place of production, or shipment to, from, or through the stockyards to the place of its ultimate destination; Class B is a description of property and services provided for the stockyards company

Class A
property
defined.

Class B
property
defined.

Trans.

- which have no real connection with the commerce described above.

20 An example of the latter class is railroad track No. 15 and right-of-way shown on page 421,—the track serving Armour & Company and located on land leased to Armour & Co. with option to purchase. It has no connection with the movement of livestock and freight to and from the loading and unloading docks of the Stock Yard Company, and does not, in my judgment, serve any stockyard facilities that are essential in the rendition of stockyard services.

21 Volume 2 is a description of the services at the Denver Union Stock Yard. The general plan is to state what happens in the handling of livestock and the rendition of other services from the time the stock arrives at the stockyards until it passes out of the yards.

22 The unloading ticket appearing on page 7 of Volume 2, and all other forms inserted in this report, were furnished me by the Stock Yard Company.

I also prepared another volume entitled "Adequacy of Facilities of the Denver Union Stock Yards for the Rendition of Stock Yard Service as of January 1, 1935." That is a volume prepared by me and the data contained therein was furnished me by Government auditors who compiled certain statistics from the stockyard records; the graphs and computations were made either by me or under my supervision. Yes, Volumes 1, 2 and 3, to the best of my knowledge, are correct so far as they reflect matters of fact, and if they reflect opinions, they are my opinions.

23 MR. MILES: The Government now offers and asks to have received the three volumes just described by the witness.

Trans.

(Whereupon GOVERNMENT EXHIBITS 5, 6 and 7 were received in evidence.)

(Witness continuing). During the course of my study and in the preparation of my report I had access to and made use of maps which are before me, prepared, I think, by Government engineers under the supervision of Mr. Zelinski. These maps were prepared at my suggestion after I had outlined to the engineers the various operating units to correspond to the units described in Volume 1 of my report. I have hung the three maps on the wall.

MR. BOSWORTH: May I interrupt here *****
I was wondering whether you, of your own knowledge, know that these maps were prepared by the Government engineers, and second, whether of your own knowledge, you know anything of the accuracy of the lines on the map. I was wondering whether or not, for example, the area of the sheep division and Sheep Barn No. 1, Sheep Barn No. 2, etc. is in proper proportion with the cattle area below.

THE WITNESS: No, I have no information of my own of the engineering facts except that I can say I know that the lines are drawn, the different operating units are outlined as I indicated, as I requested.

MR. BOSWORTH: And you are simply using these maps in your testimony from the standpoint of showing the location of the different operating units; is that right?

THE WITNESS: Yes, sir.

MR. BOSWORTH: Well, then, that is all right.

(Witness continuing). The large map is the map which was drawn to illustrate the operating units described in Volume I in my report. Each operating

Trans.

unit is given a number running consecutively throughout my report. Some of the units may not be operating units, for instance, a parcel of vacant land which you might say is not operated, but those are the units numbered on the map to correspond with the numbers and designations set out in Volume I of my report.

- 30 The map that I have just been discussing is the map referred to as No. 8. The small map at the left numbered 9 is the same character of map as No. 8 covering a different section of the property. The third map, identified as map No. 10, illustrates four outlying parcels of land which are not included on the other two maps already mentioned. Map No. 9 is used to illustrate the property lying east of the C. B. & Q. Railroad, except the small triangular parcel of land shown on map No. 10. Map No. 9 shows the stock show property, the so-called horse and mule division and certain pens and corrals and clearances in that section of the property. None of these maps shows the areas of the various tracts. I have not determined any areas myself. The areas were determined by the engineers and are shown on a separate list.
- 31
- 32 Government Exhibits numbered 8, 9 and 10, being the three maps above described, were offered and received in evidence.

MR. BOSWORTH: Of course it is understood that we are not objecting as to the maps. We are not consenting necessarily to Mr. Christensen's designations of the facilities.

MR. MILES: That is correct, sir.

(Witness continuing). I have made a study of the facilities at the Denver Union Stockyards with a view to forming an opinion as to whether the property covered aided or facilitated the stockyards or was

Trans.

necessary to the stockyards in the rendition of stockyard services, the rates and charges for which are now under investigation.

33 MR. MILES: I wish you would refer to unit Nos. 1 to 28-B inclusive, to unit 29 and 30; I wish you would indicate *on the map*, with full explanation, just where those units are; I wish, then, you would give us what facts you have discovered.

34 (Witness continuing). Units 1 to 28-B inclusive and units 29 and 30 are described in Volume I of my report under those unit numbers and are illustrated in yellow on map Government Exhibit No. 8. The Stock Yard Company owns these railroad tracks and other improvements which are necessary to their operations adjacent to the stockyards and other industries within the city of Denver. The Stock Yard Company does not own any locomotives, cars or other railroad equipment. The transportation facilities of the Stock Yard Company are used by the Railroads 35 as terminal facilities in connection with their general railroad business for switching cars and livestock to 36 and from the stockyards, * * * * * and other industries for the interchange of traffic under the terms and conditions stipulated in agreements, copies of which are inserted in Volume I. I regard these facilities as incidental to services for the rates and charges accruing to the railroad companies. They are not a part of the facilities for which the Stock Yard Company derives income for stockyard services, rates and charges for which are stipulated in its schedule filed under the Packers and Stockyards Act.

Railroad
trackage.

Terminal
facilities.

Christen-
sen's line of
distinction.

Portion of RR
reasonably
necessary to
stockyard
operation.

Transportation facilities comprise two classes, viz: A — Those referred to in Volume I as Class A facilities, which are used and reasonably necessary in that course of commerce whereby livestock and feed and material incidental to the conduct and operation of the stockyards, move to or from the stockyards; B —

Trans.

Those referred to in Volume I as Class B facilities which are used for the transportation to and from other industries but are not used for the transportation of freight or livestock to or from the stockyards.

MR. MILES: In your opinion, Mr. Christensen, does the property covered by items, units Nos. 1 to 28-B, inclusive, units 29 and 30, aid or facilitate the respondent, or are they necessary to the respondent in the rendition of stockyard services, the rates and charges for which are under investigation in this proceeding?

A. The answer is no.

- 37 (Witness continuing). Units 32, 33, 34 and 35, and the chute alleys are comparable to what might be termed railroad depot facilities. They consist of the railroad loading and unloading docks and chute alleys which are adjacent to the railroad docks. They are facilities and services furnished by the Stock Yard Company, used for loading and unloading and receiving and delivering by the railroads of livestock at the stockyards, consisting of the property commonly known as the C. B. & Q. Dock, the U. P. Dock, C. & S. or Quarantine Dock and the River Dock, including platforms, chute pens and chute alleys providing means of necessary ingress and egress to and from said docks which serve the transportation facilities hereinbefore referred to. Without these docks and chute alleys and the loading and unloading services employed by the railroad companies, they could not receive for shipment or effect delivery of livestock at the stockyards.

Chutes and
chute alleys
are compar-
able to depot
facilities.

Docks, chutes
and pens pro-
vide necessary
means of in-
gress and
egress.

The railroad loading and unloading facilities and Govt. view services referred to in Volume I as Units 32, 33, 34 re R. E. and 35 constitute the necessary facilities and services "for loading and unloading en route, delivery at public stockyards of inbound shipments into

Trans.

suitable pens, and the receipt and loading at such stockyards of outbound shipments," for and in consideration of the rates published in their freight tariffs. Based upon my own judgment and experience as railroad freight claim agent and stockyard supervisor, these are the facilities and services which the railroad companies are required to furnish under paragraph 5, section 15 of the Interstate Commerce Act.

The railroad companies have entered into an agreement with the Stock Yard Company whereby stock yard labor is utilized for loading and unloading live stock for a stipulated rate per deck. Loading and unloading services are not mentioned in the schedule of services, rates and charges for which are collected by the Stock Yard Company.

5

Loading and
unloading
chutes and
pens.

Unit No. 32 is at the bottom of the map and it is completely described in Volume I as unit No. 32. It consists of the loading and unloading platform, the chute pens and inclines, and the chute alley lying between the chute pens and the stockyard pens. That unit is generally known as the C. B. & Q. Dock. Unit No. 33 is generally known as the U. P. Dock. It is practically opposite the C. B. & Q. Dock on the opposite side of the cattle division. Both these units are outlined in brown. Unit No. 34 is commonly known as the C. & S. or Quarantine Dock and is located along the easterly side of the sheep and hog divisions and the truck division west of the cattle division and separated therefrom by the U. P. Railroad right-of-way and a roadway designated as Unit No. 123.

Unit No. 35 is commonly known as the River Dock located west of the hog immunization plant and of a portion of the sheep dipping facilities and west of sheep barn No. 1. It is bordered on the west by a railroad track of the Stock Yard Company.

Trans.

- 40 The chute alleys to which I have referred in each case are located between the chute pens and the stock-yard pens or a stockyard alley in some instances. They are the alleys which provide means of egress and ingress to and from the loading and unloading facilities without which the railroad companies could not receive or deliver freight or livestock to and from their cars. In my opinion these units, including the chute alleys, are transportation facilities required to be furnished by the railroads under the Interstate Commerce Act and therefore not necessary to be furnished by the Stock Yard Company.

Chute alleys described.**Transportation facilities.**

- 41 Units 136 to 145 are the facilities which I have designated as warehouse facilities. Unit 136 is the stock show stadium shown on map No. 9, and unit 137 is the stock show sales pavilion. Unit 138 is the stadium heating plant. Unit No. 139 is the building generally known as the stadium hook-up shed. Unit 140 is the stadium run-over shed, and is the runway connecting the hook-up shed with the stadium. Unit 141 is known as the hook-up shed pen and includes a small loading chute shown on the same map adjoining the hook-up shed on the south. Unit 142 is an entrance leading from the roadway south of the property to the hook-up shed pen. Unit 143 is the stock show restaurant. Unit 144 is the cement block building commonly known as the stock show hog barn site, it being my understanding that the building is not owned by the Stock Yard Company. Unit 145 is the so-called wash house located east of Lafayette Street. All these units are shown on map No. 9. The stock show facilities enumerated above are not used and useful in the rendition of stockyard services.

Stock show buildings described.

MR. BOSWORTH: Now, may it please the Examiner, it is our desire to object to that matter so far as these parties are concerned, it has been thoroughly

Respondent's exception re effect of prior decision.

Trans.

42 adjudicated by the United States District Court of Colorado and it is highly improper to raise this question at the present time. I am wholly aware of probably what Mr. Miles will say that there is nothing res adjudicata in connection with the rates. That is not the holding of the United States Supreme Court except as to the rates themselves but to the usefulness of facilities that is res adjudicata unless there is some change in conditions which this witness has certainly not testified to at the present time.

MR. MILES: Captain Bosworth has correctly stated a part of my position, which is that a rate case is not res adjudicata. It is my view that in this case we have a right to go into those matters which were formerly considered by a court and ruled on adversely against our present position.

MR. BOSWORTH: Do you mean, Mr. Miles, that there is to be no end of litigation upon the question of what is used and useful? ¶

MR. MILES: I mean this, Captain Bosworth, I believe that we have a right to get this matter adjudicated by the Supreme Court.

MR. BOSWORTH: You had that right before..

MR. MILES: Yes, and did not avail ourselves of it.

MR. BOSWORTH: And it became the final judgment, so far as these parties are concerned.

MR. MILES: I cannot agree that the judgment was final.

MR. BOSWORTH: Well, I want the objection noted there, may it please the court, and it certainly is one upon which I am going to stand.

THE EXAMINER: Objection overruled.

ans.

3 (Witness continuing). These facilities were not designed as a market place, for which purpose they would be superfluous and would not have been provided. They are used primarily by the Western Stock Show Association for exhibition purposes and neither that company or any of its concessionaires are within the jurisdiction of the Packers and Stockyards Act or render stockyard services. When the facilities are not used by the Stock Show Association, some of them are used for yarding horses, but this is more than offset by the fact that practically all of the horse and mule division is vacated and utilized by the Stock Show Association during the Stock Show period. Occasionally the stadium is leased for athletic events but none of the facilities enumerated above is ever used in the rendition of stockyard services. In my opinion, and it is my understanding, that none of these units aid or facilitate or are necessary to the respondent in the rendition of stockyard services.

MR. BOSWORTH: Now, of course, it is understood that my objection goes to the statement of his conclusion at the end of this testimony in the answer to that question.

MR. MILES: Yes, sir.

The witness then stated that a triangular stub of vacant land, shown as unit 147, is not used and useful property, nor is the vacant land on the west side of the river and shown as unit 148. The witness also stated that the commercial feed lots on tract 3 were Feed lots. not used and useful property of the Stock Yard Company because not operated by it. Other tracts deemed not used and useful by witnesses are other tracts of vacant land, some of which are marginal stubs, designated as units 149, 150, 151, 152, 154, 155, 156 and 161. The river easements are also designated

Trans.

as not used and useful. The tract north of Race Court, tract 3-B, is also so designated.

Club building.

(Witness continuing). Unit No. 135 is designated as the club house and grounds, shown on Government Exhibit No. 9 and faces on the west side of Lafayette Street. It is not used and useful in the ~~rendition of stockyard services~~. The ground floor is used by tenants for merchandising purposes, or is vacant and unused, and the second floor is used by the Western Stock Show Association or is vacant. It is not occupied by any club at the present time. The 58 upper floor was used at one time as a club room. There are three storerooms on the ground floor, two of which are now rented and operated by merchants, and the other room is vacant. In my opinion Unit No. 135 will not aid or facilitate and is not necessary to respondent in the rendition of stockyard services, for which rates and charges are now under investigation.

Water and sewer systems.

59 The general water and sewer system is classified as partly used and useful facilities because extensions of mains from the system serve the packing plants and a portion of the leakage loss of the system 61 is borne by Swift, Armour and Stock Yard. I have no information as to what portion of the installation expense would have been eliminated if the Swift and Armour plants did not connect up with the system, nor do I know the relative miles or linear feet of pipe.

Blacksmith shop.

Unit 119 is the blacksmith shop and ground located on Lafayette Street shown on Government Exhibit No. 9. It is only partly used and useful in the rendition of stockyard services since it is used partly for services furnished the general public which has no connection with stockyard operation or stockyard services as shown in Volume I of my report, although there is nothing to indicate the extent of services rendered the outside public and that

ans.

rendered in connection with stockyard services. The amount of dollars, I think, is shown in the audit. In my judgment that proportion of the value of the property that is necessary in performance of the services in connection with the repairs to stockyard property is used and useful and that a comparatively small proportion of the value would be considered not used and useful in the rendition of stockyard services. I have no definite basis for estimating the proportions, but I think that, in my opinion, the income that has come from outside services and the amounts charged for services in connection with stockyard repairs and other services would be a fair estimate of these proportions, and that would be my recommendation.

The witness then discussed the Exchange Building and drew the line between used and useful property and not used and useful property upon the theory that any space rented or occupied by agencies not registered under the Packers and Stockyards Act was not used and useful property. The witness then catalogued such space and designated as not used and useful, the telegraph offices, U. S. Post-office, railroad freight offices, all government offices such as the U. S. Bureau of Animal Industry, serum companies, State Brand Inspectors offices, truckers offices, livestock show office, etc. He likewise recommended the exclusion of the Western Weighing and Inspection Bureau offices and the consolidated railroad freight office. He designated the garage as partly used and useful.

Throughout my direct examination I have stated that certain properties, in my opinion, did not aid or facilitate and are not necessary to the respondent in the rendition of stockyard services. I have tried to classify and allocate the facility in accordance with the definition of the word "stockyard" in Section 302

Trans.

of the Packers and Stockyards Act and in accordance with the definition of the term "stockyard services" in Section 301 (b) of the Act. I do not contend that a corporation engaged in operating a stockyard may not also engage in other lines of business and own property and render public or private services not *within the jurisdiction of the Packers and Stockyards Act*, but my thought is that *useful and useful* facilities and services are those reasonably necessary in the rendition of stockyard services as defined in the Act 83 and reasonably necessary for continuation of stockyard services for a reasonable period.

Government Exhibit No. 12 offered in evidence, being a pamphlet entitled "Property and Services of The Denver Union Stock Yard not Used and Useful."

Ruling withheld on request of counsel.

85 The witness was then handed and identified Government exhibits 13 to 19, inclusive, as follows:

87 Exhibit 13: Photostatic copy of Drawing No. 37123 attached to agreement of July 20, 1922,—see Volume I, page 17, Government Exhibit No. 5 for copy of agreement.

Exhibit 14: Photostatic copy of Drawing No. 51542 attached to agreement of November 13, 1930,—see Volume 1, page 381, Government Exhibit No. 5.

Exhibit 15: Photostatic copy of Drawing No. 37770 attached to agreement of September 28, 1917,—see page 97, Government Exhibit No. 5.

Exhibit 16: Photostatic copy covering Unit No. 122, page 380 of Government Exhibit No. 5, and Unit No. 123, page 381, pertaining to agreements of December 7, 1929, and November 17, 1930.

Exhibit 17: Photostatic copy of Drawing No. 51576 attached to agreement of May 10, 1930,—see page 97, Government Exhibit No. 5.

ans.

Exhibit 18: Photostatic copy of Drawing No. 51454 attached to agreement of February 19, 1930,—see page 79, Government Exhibit No. 5.

Exhibit 19: Photostatic copy of Drawing attached to agreement dated February 23, 1932,—see page 453, Government Exhibit No. 5.

The above Exhibits offered and received in evidence.

8 MR. BOSWORTH: Mr. Examiner, with regard to Exhibit 12 upon which the ruling as to the admissibility—Government Exhibit—was withheld until this morning, we would object to the introduction of this exhibit on the basis that it is improper, consisting entirely of the opinion of this witness upon the used and useful property, or rather, upon the property not used and useful in his opinion, and property which is partly used and useful in his opinion, in the rendition of stockyard services, the witness not having been qualified as a stockyard operator and not qualified, in our opinion, to express his opinion as an expert in this regard upon this particular subject.

MR. MILES: It is submitted, Mr. Examiner, that the witness is amply qualified and was qualified to express an opinion. The offer is renewed. No argument.

THE EXAMINER: The objection is overruled and Government Exhibit No. 12 will be received.

(Whereupon GOVERNMENT EXHIBIT NO. 12 was received in evidence.)

Cross Examination

When on page 4 of Volume I, Government Exhibit No. 5, I refer to persons conducting a private business at the yards I mean a firm that is not related to stockyard services and not defined as stockyard ser-

Trans.

vices, and business conducted by independent operators or individuals for their own compensation or profit and who are not registered as market agencies and dealers, or who are not performing stockyard services. Those who are registered I would regard

90 as performing stockyard services. I would call the railroads a public business within the jurisdiction of the Interstate Commerce Commission and the serum companies I regard as private business.

Patron defined.

The patrons of the Denver yards are those who ship livestock to the market and purchase livestock at the market. The purchaser, however, is not a patron in the same way that the shipper is a patron.

91 The shipper sends his livestock to Denver to find a market. Yes, the patron is interested in the yard company having enough buyers on the market, such

92 as feeder buyers, packers, etc. No, I don't think the shipper is the sole patron of the market and I don't think I made the statement that the shippers were the sole beneficiary.

Patron interested in buying outlet.

(Counsel stated that in referring to page numbers until otherwise noted, the pages refer to Government Exhibit No. 5).

Railroad trackage owned by Company.

93

Q. On page 6 you state your classifications of various facilities to be Class A and B and you state that Class A consists of property and services provided by the Stock Yard Company which are reasonably necessary in the course of commerce whereby livestock passes from the place of production or shipment to, from or through the stockyards to the place of ultimate destination. Then, in your exhibit, Government Exhibit 12, you proceed to declare that much of the property which you have listed, certainly your railroad tracks under Class A in Volume 1, is not used and useful. Is that solely because of your interpretation of the Transportation Act?

ans.

A. No, I think in Class B you will find other property than—

Q. Just a moment, I am asking you about Class A now and if you will skim your volume there very quickly you will see that the very first things you take up are the stockyad tracks, that is the tracks actually owned by the Stock Yard Company.

A. Yes, sir.

Q. And you put those under the classification of what is reasonably necessary in the course of commerce whereby livestock passes from the place of production or shipment to, from or through the stockyards to its place of ultimate destination, indicating on that basis that they are clearly used and useful and I am asking you why you eliminate them later in Government Exhibit 12.

A. Now, the classification of property under Class A does not indicate that they are or are not used and useful. That is the classification based upon the actual course of commerce whereby livestock moves to, from or through the stockyards or otherwise. Now, in Class B there are railroad tracks that are not in the exact course of commerce whereby livestock are moved to, from or through the stockyards.

(Witness continuing). The tracks I refer to in Class B are the Swift and Armour track and tracks of that character because they are not essential and used principally for livestock or other freight moving to, from or through the stockyards. Yes I admit the railroads do handle livestock in commerce. The railroad systems are necessary to bring livestock to the Denver market and to its ultimate destination, but some of the tracks are not necessary. No, I

Trackage
handles live-
stock in
commerce.

Trans.

couldn't say that the tracks I have put in Class A in Volume I (Government Exhibit No. 5) have to do with the marketing, the feeding, the watering, holding, delivery, shipment and handling in commerce of livestock. They don't have anything to do with the holding of livestock at the stockyards. They are used in transporting livestock to and from the stockyards. I don't know that the holding of live stock is dependent upon the transportation which occurs previous to the holding. The rails, as such, and the locomotives and cars have nothing to do with the actual feeding of the livestock or their watering or sale.

- 97 The definition of stockyard services, Section 301 (b) of the Packers and Stockyards Act was then quoted to the witness as follows: "Services or facilities furnished at a stockyard in connection with the receiving, buying or sale on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, weighing or handling in commerce of livestock," and the witness was asked whether, except for his interpretation of the transportation act he would hold the stockyards-owned tracks to be stockyards facilities.

(Witness continuing). No, I do not think I would. The definition says, "at the stockyards", and those functions of holding, marketing, feeding and watering must be performed at the stockyards. The transportation occurs prior to arrival and the transportation facilities to and from the yards, are much like highways. They are facilities that are used prior to and subsequent to the stockyard functions. No, I do not argue that the flow of commerce ceases at the stockyards or that the handling of livestock in commerce ceases at the stockyards; it continues through the stockyards but the services of the railroad company cease when the livestock is delivered in the

Trackage like
highways.

Trans.

suitable pens at the yards. Yes, it is my opinion that apart from the transportation act the railroad trackage owned by the Stock Yard Company over which the livestock passes to get to the unloading sheds 99 and pens, is not a stockyard facility. I do not think it makes any difference that the Stock Yard Company, instead of owning the rolling stock, locomotives, etc., has leased its trackage for operation by all railroads jointly. I am differentiating between transportation facilities and stockyard facilities.

Leasing of
trackage not
material.

I will check to see whether Track 10 was leased to Armour & Company (respondent claims it was not). I will agree that the lease states the facts as 100 they are. On page 15, I say that the yard company does not own or operate any railroad locomotives or cars and does not furnish transportation facilities. Yes, from my observation and experience factories do require sidetracks into their property, but I think the stockyard tracks are in a different category because they are used and operated by the railroads for their general railroad business, including the 101 transportation of livestock to and from the stockyards and to and from the packing houses and other industries. An industry track or spur track is not 102 used for anything else than to serve the industry.

Yes I know, with the sanction of the Interstate Commerce Commission, railroads probably do make deals with regard to the cost of installation of a long sidetrack where they expect a large volume of traffic, 103 and this is, in effect, rent. My judgment is that railroad tracks are essential to transportation, and whenever they are within the jurisdiction of the Interstate Commerce Commission, they have nothing to do with stockyard service for which stockyard rates are charged. The rates for that service and the facilities for that service, it seems to me, pertain to transportation business and not the stockyard business.

Railroad
tracks
essential to
transportation
of livestock.

Trans.

I refer to Section 15, Paragraph 5, of the Transportation Act in connection with the loading and unloading facilities and not with the outside transportation facilities and by that I mean facilities that are necessary in that flow of commerce which brings live-stock to, from or through the stockyards.

104

Q. Well, Mr. Christensen, we, of course, claim no interest direct or indirect by virtue of value or otherwise to a single inch of track outside our stockyard area. Now, let us limit our discussion to the trackage within the stockyards area. What part of that, if any, is outside trackage or outside transportation facilities?

A. That brings up the question of what you mean by stockyards area.

Q. Look at Government Exhibit 8. Here you have on Government Exhibit, let us say Government Exhibits 8 and 9, you have there all of the land in those two maps on the east side of the Platte River which is owned or in any manner claimed by the Stock Yard Company, haven't you?

A. Yes, sir.

Q. I am referring to the trackage which is in, on or over our stockyards property. Now what, outside or that, or ~~what are the traffic~~, or trackage, would you call outside transportation facilities.

A. I would call all of that outside because the property that I regard as stockyard facilities does not include the railroad right-of-way.

Q. Well aren't we doing what is sometimes described as chasing our tails around? That is, because you feel that transportation facilities by virtue of the control over them by the Interstate

Trans.

Commerce Commission are not stockyard facilities. That is what I am simply trying to get you to say, if that is your viewpoint.

A. I am not sufficiently familiar with the Interstate Commerce Act to say that my opinion is based upon that. My opinion is based upon the service and the character of the functions that are involved as compared with transportation, moving, shipping, to and from the stockyards and as to the stockyards services defined in the Packers and Stockyards Act within the stockyards.

Q. Well, I am afraid I am going to have to ask you to tell me what you mean by the services which they render, then.

A. The best answer I can give to that is the definition given in the Act.

Q. Well, read it. Here it is right here. (Handing copy of the Packers & Stockyards Act to witness).

A. The term—this is section 301 (b). "The term stockyard services means services or facilities furnished at a stockyard in connection with receiving, buying or selling on a commission basis or otherwise, marketing, or feeding, watering, hauling, delivery, shipment, weighing or handling in commerce of livestock."

106 (Witness continuing). Except for a few feet of track that may lop over on to Swift's or Armour's property, all of the railroad tracks in that area are on land either owned by the Stock Yard Company or

All trackage
is on Stock-
yard Company
land.

107 leased by the Stock Yard Company. Yes, the railroad tracks are used for transporting the livestock to the point of delivery and taking it from the point of shipment.

Trans.

I state on page 39 that Track No. 1 does not serve
108 directly any stockyard loading or unloading facility.

This track is shown on Government Exhibit No. 8, is
109 numbered 1 and followed by "294 feet." That track is
connected with the U. P. Railroad and C. & S. joint track.
It connects with Track 25 at the north and forms a link in the system of tracks which serve certain stockyard facilities and other railroad tracks not owned by the Stock Yard Company. It goes down south to the U. P. tracks which serve the loading and unloading dock. Yes, it is a continuous track with
110 track 25. I don't know whether the different numbering taken from the Stock Yard Company records merely represents a different time of construction but it serves a continuous trackage, and Track 25 in the same way, with certain switches and frogs is a
111 continuous track with Track 28. Yes, Track No. 1 and Track 25 is a continuous strip of railroad used as a tail track for loading and unloading the U. P. and C. & S. long livestock trains. I suppose tail track means an extension beyond the loading dock which would be necessary to hold the empties or loaded cars in connection with loading and unloading livestock. Yes, it is true that you have to have that extra space in order to move the train either forward or backward for the purpose of loading or unloading.

Lack of rolling stock does not affect viewpoint.

Leasing of trackage not material.

No, I don't think my viewpoint would be different if the Stock Yard Company owned the locomotives, did the actual hauling and paid the usual rental which all the railroads pay, one to the other, for freight cars that are stopped or used over the carrier's track. I would still feel that that was a transportation function and not a stockyard function as defined by the Act. I do not think that the fact that the railroads, as I state, operate these tracks for their own compensation or profit, has anything to do with the classification of the services.

ans.

Track No. 10 is 85 feet of track directly south of the southerly edge of the Armour property and directly north of the concrete roadway. I put that track under Class B facilities because it is the lead that connects with the Armour spur track.

Q. As a practical matter it is practically a frog, isn't it, that 85 feet would be almost designated as a frog, wouldn't it, in railroad operations?

A. Well, it is the portion of that track which is located on stockyard land. My understanding is that Armour's track begins at the property line and the Stock Yard Company Track No. 10 extends up to the property line where it connects with this Armour track.

Q. But it takes 85 feet of track to put it on the proper curve to take it from our track to the edge of our property line, and that is Track 10, isn't it?

A. That is Track 10.

Q. Now isn't the producer of livestock interested in the movement to a packer of livestock or the movement from a packing plant of the slaughtered product in your opinion?

A. No sir, I don't think that is a stockyard function at all and furthermore this track is not a livestock track. It goes into the Armour & Company's plant and I think they call it their coal track, not used for switching livestock.

(Witness continuing). No I would not say it is used only for coal, but I say it is not a livestock track. The principal meat shipments are loaded at Track 15 or 14. This track may be used for hides, oleo and other by-products and hauling them out of the packing plant area. I think that is the case, al-

Trans.

though I am not personally familiar with that. It may be used for those purposes, but I say those are not stockyard services in my opinion. I would consider it a stockyard facility to take track from its main line to the property line of the packer.

115 Track No. 11 is also a tail track, and with other pieces of track bearing a separate number, forms one continuous strip connecting with the D. & S. L. Railroad in the northerly end of the yard and serves the unloading docks at the sheep barn and hog barn and the C. & S. dock.

**Necessity for
yard company
to move
tracks.**

Yes, in my examination of a good many of the contracts contained in my Volume I, such as the contract beginning on page 98, I found that they were

116 caused by the necessity of the Stock Yard Company to move the trackage in order either to change, expand or alter its facilities. In several places in my report I mention a third rail. That is the additional rail to permit narrow gauge cars to be operated over the tracks and the third rail system extends all the way through the yards from the C. & S. right-of-way at the south end to the hay barns and manure dump at the north end near Race Court. Yes, Track 26 is a cross-over track and necessary for any traffic coming on either Track 4 or Track 25 to get over to the other track. It is necessary in order for traffic mov-

117 ing in a northerly direction over the U. P. or C. & S. and our Tracks Nos. 1 and 25, to reach Hay Barn No. 4, and I think it is so used. It is used for spotting hay cars. Whether the delivery of hay to the Stock yard is a stockyard facility or service depends on what delivery you mean. I would not consider the delivery

118 by railroad companies as stockyard service. The only distinction between a roadway composed of steel rails and a roadway composed of asphalt, macadam, dirt, in both instances the entire material of which and the cost of which has been owned and put in place by the

rans.

Stockyard Company, would be the physical difference, but neither of them would be commonly known as the stockyard.

MR. BOSWORTH: (continuing) Well do you mean to say that a roadway through the land on which actual roadways are situated is not stockyards property, not a stockyard facility?

A. I think there are certain roadways that are necessary and incidental to stockyards services that should be classified as a part of the stockyards.

Q. Now, what roads are they?

A. Well, certainly roadways that I have designated in my report and practically all of the roadways that I have described giving access to and from the stockyards from the public highways and other means of ingress and egress to the stockyards property.

Q. What is hauled over those roadways?

A. Well, there is hauled livestock, livestock trucked to the stockyards are hauled over those, some of those roadways. Others are used for getting around with the stockyards trucks and some of them are used by the packers and the general public.

Q. And for hay and haulage of hay?

A. Yes, sir.

Q. For the cleaning of the yards?

A. Yes, sir.

Q. And you say they connect with public highways outside the stockyard area?

A. Some of them do, yes, sir.

Trans.

Q. Well, don't they all, as a matter of fact, connect either by means of cross-overs or otherwise with public highways?

A. Yes, I think practically all of them have access either directly or indirectly to some public highway.

Q. In other words, there isn't any blind roadway that starts at one blind stop and ends at one blind stop, in other words, that you can't get onto, is there?

A. Well there might be one that I have reference to that goes into the,—goes into a public street into the north end of what is known as the River Dock that ends there. That is, the southern end of that roadway does not connect with any public highway.

Q. No, but the northern does.

A. The northern does, yes, sir.

Q. And that is like a tail track, isn't it?

A. Yes sir, it is a means of ingress and egress to that portion of the yards and to other industries located in that area.

Q. And those, in your opinion, are stockyards facilities, aren't they?

A. Yes, sir.

(Witness continuing). The difference between that situation and the railroad trackage located on stockyard land is that that difference has been created by the stockyard itself. The stockyard has made deals with the railroad companies for operating those facilities. Roadways are operated for the most part by the Stock Yard Company. Yes, it is correct that I testified that the fact that the Stock Yard Company had leased its rails on its own land, built

Leasing of
trackage not
material.

Trans.

by it for the joint use and operation of the carriers in the stockyards area, did not affect my decision one way or the other, and that it would make no difference whether or not the Stock Yard Company owned the locomotives and actually operated the trackage itself. My answer, if I remember it right, was that

122 that was not the controlling factor but that the function was what governed my opinion. It indicates that the Stock Yard Company is not operating those facilities, that it has turned that function over to the railroads and that it becomes a transportation function. My understanding is that the revenue goes to whatever may be left; that is, if there is a net operating income, that it would accrue to the Stock Yard Company.

123 With regard to Unit No. 132, I have not observed that the Yardmaster's office is used by employees of the Stock Yard Company in spotting hay cars and livestock cars and as a shelter house during inclement weather. It seems to me that spotting cars is a transportation service. No, I wouldn't say that employees of the industry desiring freight cars would not pay any attention to where they go or as to what

124 they do. Yes, they direct the spotting. No, it would not change my opinion that the employees used the Yardmaster's office to direct where cars should be unloaded, but if they used it for shelter house to any extent, it might be considered as used and useful to that extent. Yes, I testified and it was my recommendation that the various loading and unloading docks, loading and unloading chutes and the chute alleys described on page 137 of my report should be

Unloading
chutes and
docks.

125 excluded from the rate base as transportation facilities or depot facilities because they are the facilities that the railroad companies need and use for loading and unloading and receiving and delivering freight and livestock at the stockyards. I don't know the term "depot facility" has ever been used before in

Trans.

connection with stockyards. There is no reason in the world why the Stock Yard Company should not own its depot facilities but I do not think it 127 comes within the definition of a stockyard or a stock-yard facility. Yes, these facilities have something to do with the holding, delivery, shipment, marketing and handling of livestock in commerce.

Q. I am asking you if these unloading chutes, these docks, these so-called chute alleys, I should say as you call them chute alleys, are not services or facilities located at the Denver Union Stock Yard in Denver, Colorado?

A. Well, the word "at" is confusing, I do not know just what you mean.

Q. Well, now, answer my question. Are they not located at the Denver Union Stockyard on ground owned by the Denver Union Stock Yard Company?

A. They are located on ground owned by the Denver Stock Yard Company but they are located just outside the stockyards.

Q. Now, just a moment, they are located on ground owned by the Denver Union Stock Yard Company?

A. Principally, yes.

Q. Entirely, aren't they?

A. With one or two exceptions. Oh, you are talking about the unloading—

Q. Docks?

A. Docks, yes they are.

Q. And the unloading chutes?

A. Yes, sir.

Trans.

Q. And the unloading pens?

A. Yes, sir.

Q. And the so-called chute alleys?

A. Yes, sir.

Q. Now, don't those items of property have something to do with the marketing, holding, delivery, shipment and handling of livestock in commerce?

A. Yes, sir, in commerce but not in my opinion at the stockyards.

129 (Witness continuing). The chute alley is the alley adjacent to the chute pens in which the live stock is unloaded and from which it is loaded. It is a means of egress and ingress to and from loading and unloading facilities and the only means by which livestock can be received and delivered by the railroad company. The chute alleys are not used solely for that purpose but are used for other purposes, but it is the primary use, in my judgment, except for which they probably would not have been built. I have classified other alleys as "general alleys". They are numbered 43 on Government Exhibit No. 8. They are built for marketing functions out at the stockyards to get to the pens and cross-alleys and other alleys in that area. Yes, the chute alleys so-called are in some instances used like a two-way road, they are two parallel alleys, one serving the loading and unloading pens and then a parallel alley serving the stockyard pens parallel to the chute alleys.

Chute alleys.

130 On Government Exhibit No. 8 the brown line covers a dotted line which represents the fences between the chute alleys and the stockyard alley, the latter serving the stockyard pens and the former serving the unloading chute pens. Yes, the fence is broken all along with gates.

Trans.

131. I have not observed it as a practice that the Stock Yard Company uses the unloading chutes repeatedly for yarding off the scales. In fact I never saw any livestock yarded off the scales directly into these chute pens.

I draw the distinction between the truck loading and unloading docks, chutes, pens and these so-called Burlington, C. & S. and U. P. Docks, chute alleys, chute pens, on the fact that the railroad loading and unloading facilities, in my opinion, are required and necessary in completing the transportation function, which is a railroad service, while there is no such requirement as indicated in Section 15, paragraph 5, of the Interstate Commerce Act with respect to loading and unloading facilities for truck shipments.

- 132 Yes, my viewpoint is based upon my interpretation of Section 15, paragraph 5 of the Transportation Act in this respect, and the further fact that the Stock Yard Company receives compensation from the railroad for loading and unloading cars, uses its own employees in so doing. It is my understanding that 133 there is no special charge made for unloading trucks. Yes, the tariff carries a higher charge on truck shipments, but that is the yardage charge. I don't know just why they do it, but I would say that is was because of the fact that the yard company has to furnish these loading and unloading facilities and because there are more numerous lots to be yarded and it requires more service. Yes, the work of loading and unloading truck shipments at the loading docks is one factor in the additional charge and the work of handling smaller consignments.

Q. Well, that enters into the measure of compensation, doesn't it, rather than the reason for the compensation, that is, the smaller consignment, that is a measure, in other words, Mr. Christensen, just to the record may be clear, so

Viewpoint
based on
construction
of Sec. 15 (5)
of Transporta-
tion Act.

Trans.

we may be talking along the same basis, if your consignments come in small lots, as they do in a truck, and there is more work, you might be entitled to a higher rate of compensation than you would if they came in large shipments, by the fact of compensation as such is for the loading and unloading service, isn't it?

MR. MILES: Does the witness know? If he does not, I suggest that—I object to it.

Objection overruled.

(Witness continuing). Government Exhibit No. 2, being the tariff at the Denver yards, shows that for use of facilities a charge in addition to the regular yardage charges will be assessed against all livestock received at these yards by vehicles other than rail and a charge of 5c per head on cattle, 2c on 135 calves, 2c on hogs and 2c on sheep. Yes, there are chute pens which are comparable with the railroad chute pens except that they are much smaller and the yarding pens for truck shipments are more numerous and smaller than those used for rail shipments.

Yes, I am familiar with plural-owner shipments by rail and that there may be as many as 10 or 15 owners of the livestock in a single car and that the number of head of livestock of each such owner may be comparable to the number that arrives by truck. In some instances each owner's livestock is put in a separate pen, but not always. I think 137 there are more small pens being constructed than formerly because of the fact that there are more community shipments, or more plural-owner shipments than formerly.

The witness was asked whether the yard company or the commission men made any distinction as to the pen in which the rail shipments are yarded and

Trans.

- a pen in which a truck shipment is yarded, and witness replied: The pens are interchangeable and can be used in almost any way that the stockyard or the commission men may see fit, but the shipments that come by rail are ordinarily first unloaded in carlot pens, whereas the truck shipments are unloaded in smaller pens adjacent to the truck dock. I think
 138 that in the truck section where most of the truck shipments are handled, the pens are smaller than they are in the so-called carlot section.
- 139 The sections that I have designated as purchasers' temporary holding pens and service alleys are designated p-40 within a circle. The trader section is designated by the number within the circle preceded by the letter "T", and the commission section is designated the same way preceded by the letter "C". All the sections preceded by the letter "U" are the utility pens, which are not used principally by the other sections already referred to. Such pens are not assigned or designated for the principal uses of the commission men or purchasers of livestock. No, I don't mean by the assignment of pens that the Stock Yard Company makes any ironclad assignment to anyone or that anyone has anything in the nature of a lease. It is part of the program of management of
 140 the yards for the utilization and orderly conduct of the Yard Company business. Yes, the Yard Company can change these assignments at any time it sees fit and apparently does so.

Pens are assigned in orderly conduct of the business of the Yards.

- 141 Commencing with page 148 I used the term "initial yarding" and by that I mean the yarding and handling of livestock consigned to the stockyards for sale while it remains the property of the consignor or the shipper. Re-yarding is the yarding and handling of livestock after it has been sold and weighed and passed into the custody of the purchaser. There are two separate and distinct services in my opinion,

Trans.

one which is necessary and required by the shipper or
the vendor and the other which is necessary and re-
142 quired by the purchaser of livestock. Yes, I would
think it would constitute re-yarding if, after the sale,
the livestock was put back in the same pens from
which they came to the scale.

Q. Well, as a matter of fact, Mr. Christensen,
isn't the whole thing a part of the one purpose
for which the producer sends his cattle or his
livestock to Denver Union Stockyards?

A. Well, the purpose of the shipper in send-
ing his livestock to the market is to sell, and for
that service naturally the facilities that would
be required for selling and weighing and hand-
ling and sorting his livestock preparatory to sale
would be, in my opinion, initial yarding facili-
ties.

Patrons
interested in
buying outlet.

Q. And you, then, seek to draw a line at the
instant of sale, is that it?

A. Yes sir, at the sale, at the time the sale
and delivery and the transfer of ownership takes
place.

(Witness continuing). Yes, in my opinion the
shipper is interested in preventing anything which
might hamper sales. I have always drawn a line at
the scale. I do not recall whether I drew such a line
in the 1930 hearing. I do not recall just what I said
144 on the subject at that time. Yes, the pens to which
livestock are moved after sale, whether temporary
holding pens or directly the chute pens, or any other
pen, they are in the operation of a stockyard. No, I
couldn't say that it is true, to my knowledge, that the
point of delivery of livestock is the holding pens to
which it is moved after the scale. Livestock is sold
in the ordinary course of business and delivery is ef-
145 fected when it is driven off the scale. No, it doesn't

Shipper
interested in
preventing
hampering of
sales.

Trans.

alter my opinion that much of the livestock in Denver is sold freight paid to the Missouri River. No, I am not making a recommendation that there be a charge upon the purchaser for these so-called re-yarding services. I don't know that such a charge would hinder sales. It might establish a different method of arriving at market prices. I cannot answer as to whether or not, in the long run, such a charge on the purchaser would result in a lesser price to the shipper to offset whatever charge was paid by the purchaser.

146 No, I have never purchased livestock. My opinion is that the purchaser is going to use every argument he can to reduce the price he has to pay for the livestock he purchases. That is the normal business practice. Yes, I think it would be the purpose of the purchaser to deduct the increased cost of the purchase from the purchase price so that his net would not be affected.

Yes, the temporary pens are used by the Stock Yard Company to some extent to clear the scale pens and the scales. There are some small truck pens which are part of the scale operating unit; then there 147 are other pens that are used in holding livestock for greater periods of time, some quite temporary and others for some considerable length of time. Yes, it is true that all this constitutes an orderly operation of the yard, and I will admit that the small catch pens at the scales are inadequate to handle the mass of livestock that goes over the scales in a day's time.

No, I don't know just the exact time they start 148 loading the trains. The market opens between 8 and 9 o'clock, I have forgotten the exact hour. Yes, I think 8 o'clock is the time. Weighing commences shortly after the market opens. No, the catch pens would not be suitable for holding the entire movement of livestock over any scale from 9 o'clock in the morning until the loading up of the "hot shot" train.

Trans.

When I spoke in my report of packer pens I did not mean that they are leased to the packers but are only assigned to them in the orderly operation of the yard by the Yard Company. Packer pens are usually used for holding livestock purchased by the packer for local slaughter and they are, in many instances, held 149 in those pens for some considerable time longer than if the livestock were moving out of the yards. Live-150 stock held for slaughter is held longer than that sold for immediate shipment. Very few hogs are sold for immediate shipment. When I said that livestock was held "indefinitely" in the purchaser section I intended to mean without any restriction as to time. I 151 wouldn't say that they are all moved out within 24 hours. I have no specific case to refer to. The temporary pens are purely temporary places where livestock is put pending the purchaser's directions and 152 removal from the yards. The charge is made on a shipment basis and by that I mean that all the charges are kept track of on a shipment, and when it is removed, then the charges are collected. The yardage or marketing charge is not a charge for the use of the physical facilities only. It also includes the 154 services of yarding the livestock, driving, feeding and watering and holding the livestock. I don't recall whether the term is included in the tariff, but if it is I presume it is a charge for the privilege of the market.

Assignment of pens.

Purchaser may hold livestock in pens indefinitely.

Marketing charge.

Charge includes privilege of the market.

Q. I hand you tariff No. 3, which is the tariff now in force at the yard and ask you to read down there where it says something about privileges of the market.

A. "The schedule of charges for the privilege of the market service, feed, and so forth, rules and regulations."

Trans.

Q. All right, in other words, isn't this marketing charge for the privileges of the market in part at least?

A. That is what the schedule states. I don't know just what is meant by "privilege of the market."

Q. And how long have you been around the stockyards?

A. I have been around the Denver Stockyards for 15 or 16 years.

155. (Witness continuing). Yes it is true at Denver

and at most stockyards that no charges are made whatever for a shipment which does not sell on the market. I am familiar with the privilege which is called "trying the market." No charge is made at Denver for that privilege. Yes, I stated in my report that all yard or marketing charges except as noted are collected from the persons who cause the livestock to come to the market on the theory that they

156 are the sole beneficiaries. I don't know that anybody ever told me that theory unless it was the stock-

yard officials and I won't say that they have said he was the only beneficiary, but it has been stated to me that the service is furnished to the shipper and that he is the one for whom all the stockyard services are furnished. Yes, it is customary for the vendor of a house to pay the real estate man's commission. Yes, the producer of livestock, the shipper, sends the livestock here for sale.

Charge
assessed only
on sale.

Producer
sends cattle
for sale.

Q. As in the case of a house, isn't it right that he should pay the charges incident to that sale, including the privilege of the market?

A. Well, including the privilege to him to come to the market and the services and facilities that he requires.

Trans.

- 157 The driving of cattle and calves from the unloading facilities, placing them in commission pens and effecting delivery to consignee or their representatives, is only part of the service rendered by the Stock Yard Company. That is the part I call the yarding service. It is not the total of services rendered by any means.
- 158 In Volume I of my report at page 158 I speak of *Yard trader*. yard traders who buy and sell for their own account. I think they buy some cattle and make a charge based
- 159 on so much a head or so much a car, but I think in most cases they take title to the livestock that they buy and sell and in some cases they know about where they are going to place it and they collect a charge of so much a head instead of taking that in the form of a profit. That is my impression and I do not know that it is true that they operate also as order buyers. They are registered as dealers while order buyers are
- 161 registered as market agencies, because they buy for someone else on a commission basis, whereas the dealer buys for his own account or for the account of his employer. I do not think a dealer would be permitted to act as an order buyer or authorized to act as an order buyer under the Packers and Stockyards Act unless he registers as a market agency.
- 162 I have no knowledge whether they act as order buyers or not. Yes, it is to the interest of the shipper to have buyers on the market and it is to the interest of the shipper to have dealers on the market. *Yard traders beneficial.*
- When yard traders sell livestock through commis-
- 163 sion men the full yardage is collected at Denver as shown by Government Exhibit No. 2. The charge is made for exactly the same use of the market as is made by the original shipper. *Plants pay full charge.*
- 165 On page 170 of Volume I of my report, which is Government Exhibit 5, I distinguished between general alleys and service alleys. General alleys are used for general traffic in the stockyards for the accomo-
- General alleys and service alleys.*

Trans.

dation of hay wagons, manure wagons and general traffic, while the service alleys are used principally for reaching the pens adjacent to which they are located. The pen gates, in most instances, open on the service alleys. No, I do not think this designation is made by the Stock Yard Company itself. Under my distinction the only general alleys are the long north 166 and south alleys shown on Government Exhibit 8 marked with a figure "A3" in a circle. A commission man will have pens on both sides of the service alley so he can sort back and forth. The general alleys are 167 not used in that way. Most of the service alleys extend east and west. Yes, hay wagons and manure wagons go up and down these lateral alleys and livestock is driven up and down the north and south alleys. The north and south alleys are longer because the Denver yards lie north and south. They would be comparable to a through avenue and a street. The general alleys are used for through traffic and not so much for livestock because they are not used in servicing the pens. They are used for driving the livestock from one division to another and for other purposes. Yes, the hay wagons come down the main alley to service the pens and go into the side alley to service them.

With reference to my statement on page 187, it is my understanding that most shipments of sheep consigned to a commission man regularly doing business on the second floor of the sheep barn are moved directly to his allotment of pens and that the ground floor pens in the sheep barn are used for overflow or general utility purposes, under various operating conditions. Yes, they have more uses than the second floor pens because I don't think there are any great 169 number of general utility pens on the second floor, if any. I don't know personally of any sales having been consummated on the ground floor. Yes, I think it is true that when the commission pens are crowded

Trans.

sheep are sold in these ground floor pens. Yes, those sections are crowded during the peak season. Yes,
 170 there are well marked peak seasons in sheep, the greatest receipts at the Denver Stockyards usually Peak seasons. come in October. These sheep that come in the Fall come from the ranges and mountain passes. I don't know just when the peak season is on the northern feedlot sheep.

Yes, there is a well defined peak in cattle receipts Peak seasons. which occurs in October and November and maybe somewhat later than that in the Fall of the year. January is the peak with regard to hogs. Yes, the peak load of cattle and sheep overlap to a certain extent.

The sidewalk of which I speak on page 209 of my report is not a public sidewalk out on Lafayette Street but is a sidewalk on stockyards land by which people approach the area shown on Government Exhibit 9. It was my judgment that it was appurtenant to the club building. It is used by persons having business in the area shown on Government Exhibit 9; but it leads directly to the stairway leading up to the second floor of the club building and also directly into the area shown on Government Exhibit 9.

174 On page 210 of my report I assign the stock show use as a secondary use of the horse and mule division (Witness was asked to check the agreement to see if the time allotted to stockshow use was not two weeks). Whatever the agreement states is the time is correct and during the balance of that yearly period the property is used by the horse and mule division. I incorporated in my volume the leases between the Stock Yard Company and the Colorado Horse & Mule Company, although those leases have expired by lapse of time. It is my understanding that they have not been renewed.

Trans.

MR. BOSWORTH: You are correct, Mr. Christensen, these leases have expired, renewal having been refused, and the Colorado Horse & Mule Company is occupying the premises at will or by sufferance.

Trader scale.

177 All scales are for the general use of the business of the stockyard but a particular scale mentioned on page 241 of my report is one of the scales that is principally used in connection with weighing traders' cattle because it is adjacent to the section in which the traders operate. Many of the traders during the peak season are moved north of the 2600 alley, but I don't think the regular traders are. During the light season I don't think their allotments are changed but they operate in the commission section to avoid driving the livestock down to the so-called

178 trader section. Yes, I believe it is true that assignments to dealers are only made from September to January each year and that the assignments are made in September. This scale may be used in some instances for weighing in commission cattle but not to the same extent. Yes, it is used like every other scales weighing any livestock that comes there for weighing. The same thing is true of Scale No. 6 on page 245 of my report, ~~only it is further south and is used to a greater extent when a trader's business is heavy and during the light season it is closed for a considerable portion of the year.~~

Packer scale.

180 Yes, it is my understanding that Scale No. 3 is operated by a packer and not operated by the Stock Yard Company. I notice that the scale is not in actual use. The north scale, which is the larger scale, is not used for weighing market hogs but is used by the packer for weighing hogs in that section of the yard which is now used by the packers as holding pens.

182 I put in the contract on page 253 and the following pages for the purpose of showing the terms and

Trans.

conditions under which the water system therein referred to was put in. I don't know whether they have expired and been fully cancelled but I presume the documents will show. No, I don't know that there is no such Company as the Denver Union Water Company and I didn't know that it had gone out of business fifteen years ago. I don't know whether the agreement referred to on pages 260, 261, 263, has been cancelled or not; all I know is what appears in the document itself. The same is true of the contract commencing on page 264.

Water system.

On page 295 I speak of a general sewer system. No, I don't believe the sewer outlets are shown on Government Exhibit 8. No, I could not indicate where 184 they are. I might approximate their location. I know that there is one sewer line originating in the cattle division that passes through the railroad right-of-way and through Units 149 and possibly 156. Then there is another line further south and possibly one more outlet over west of Swift & Company. That is all I can remember at the present time except the sewer from the horse and mule division which passes over on the east side of the C. B. & Q. tracks, entering into the 18 inch city sewer, located partly on the stock-yard land. This empties into the main sewer leading to the Platte River. The contract on page 295, referring to an agreement in 1904 by which the Ward Hotel was given some sort of a sewer line right, I do not think that contract is in force. I think the 184 Ward Hotel is connected with the City sewer and to the old sewer line has been abandoned.

Sewer system.

186 In referring to the Armour viaduct on page 329 and the Swift & Co. viaduct on page 330, I did not mean to imply these are Armour and Swift properties and not Stock Yard property. The only reason that I designated them as Armour and Swift viaducts

Trans.

was because they lead towards their plants. They also serve cattle pens in between.

187 The easement for the Union Pacific sewer does not interfere with the surface use of the ground in any way. It could only interfere in case they were repairing the sewer. Yes, the Stock Yard Company under the agreement maintain and hold dominion and control over the tracks.

188 On page 379 I speak of a roadway as the Swift & Company roadway. It is simply designated that way to identify that particular part of a general roadway which now extends from 46th Avenue on the south to the County road on the north. I have shown it in three sections but they all constitute one com-

189 plete roadway through the property. One of those sections I designated as the Armour roadway, but that is merely a designation. They are used as an approach and exit to stockyards property and also to the packing plants adjacent thereto and to some extent for just ordinary general traffic from Franklin Street to 46th Avenue. No, I think it has not been dedicated to public use. It is a private roadway and there are signs at both ends which indicate a private road. I designate one of the sections of this road Unit 123 as a joint roadway leased from the Union Pacific. The Swift and Armour roadways, page 191, were built first and there was no roadway through the property until this joint roadway which made a connecting link joined them together, and made a through road-

192 way. I don't mean to imply that it is a joint roadway for the use of Armour & Co. and Swift & Co. The roadways are in agreement, and they indicate that it was provided at least for the use of Armour. They wanted another way to get out except going north. They wanted to get one south, and this property was leased from the Union Pacific Railway Company, being part of their right-of-way and some shifting of the tracks was necessary in

Trans.

order to make this roadway, which is located principally on the Union Pacific Right-of-way and extends over some six feet or more on Swift & Co.'s property, where it adjoins that property. Yes the roadway mentioned on page 393 of my report is a private roadway used to get to cars standing on Track 28. If they were unloading cars with hay or freight spotted on that track they would use this 193 roadway. Yes all of the roadways are used for stock-yard purposes in stockyard operation and in connection with stockyard property.

194 Yes, the principal purpose of shippers in sending livestock to the Denver market is the sale, and they are accordingly interested in the fact of sale and having a market. Yes, I think there is a distinction between the market and the market place. The market place is a facility while the market is a transaction which constitutes trading and marketing livestock at the stockyards. They are bound up very closely together. You could not have the one without the other. All the men who are at the stockyards

Shipper
interested
in sales.

195 in their own business, profession or official duties, deal with the livestock industry or are people engaged in the livestock industry. Yes, the railroads and the offices in the Exchange Building are concerned with the transportation of livestock,—that is the principal part of their business, and the serum companies are concerned with the prevention of disease and maintain a stock of disinfectants there for disinfecting cars and pens.

All tenants
engaged in
livestock
industry.

No, you don't ordinarily speak of the Laramie yards as the Laramie market, nor of the Pueblo yards 196 as the Pueblo market. They are regarded as transit yards,—feed yards. Yes there is a distinction between those places and Denver, and that distinction lies in the market. Yes, it is a considerable convenience to the shipper or the purchaser to have these railroad offices at the stockyards where their trans-

R. R. and
telegraph
offices con-
venient to
shipper.

Trans.

portation questions can be settled. It is a particular convenience to the livestock industry to have these telegraph offices there. Yes, the bulk of the mail handled in and out of the postoffice is in connection with livestock and in connection with mail received 197 and sent by people engaged in the livestock industry.

Q. And if these market agencies and dealers were not at Denver and operating, as you define it, on the market place, the shipper would not send his livestock to Denver except as a transit yard like Pueblo, would he?

A. Well, if there was no market there he would not send them there for sale.

Q. And without getting into the question of the number of individuals or firms, you cannot have a market without the market agencies and dealers there, can you?

A. They could have a market there by having the shippers sell their own livestock to the independent purchaser, for instance, the packer buyers might meet the producers direct, but that would hardly be practical.

Q. That is somewhat theoretical, isn't it, because that never has been worked out in practice and never has been done, has it?

A. Not to any great extent.

207 No, there is nothing in the Transportation Act which permits the Interstate Commerce Commission to compel the Stock Yard Company to build loading docks or to give land or provide facilities for loading and unloading livestock. It might require the railroads to build them. Yes, the presence of those unloading docks at the stockyards and the presence of the railroad tracks on your land is equally of benefit to the producer and the presence of the loading docks 208 and trackage is also a benefit to the producer. Ya

Market could not exist without traders, dealers, and other market agencies.

I. C. C. can't compel Yard Co. to build tracks and docks.

Docks and trackage benefit producers.

Trans.

they do handle livestock in commerce.

When the club building so-called was constructed there probably was use for it. I don't remember and I don't know just when it was constructed. I was not here at the time. No, I don't take the position that it is not proper to have in the rate base as used and useful property, property which is devoted to the care and comfort of people regularly employed at the stockyards or of the patrons of the yards. Yes, at the present time the second floor of that building has an occupancy connected with the livestock industry and whatever income is derived from the rental of the stores, helps the carrying cost of that building.

Club building once needed.

(Then witness was requested to consider both Government Exhibit 5 and Government Exhibit 12, in the discussion of the stock show property).

I don't know when the stock show started and Stock show.
how long it has been running, but it has been for a

209 great many years. Now none of the facilities, in my

Facilities not excessive.

opinion, are excessive or not needed for the show. I think the show has been a benefit to the livestock industry as a whole. It has had a tendency to improve the herds, has been a valuable educational unit in the livestock industry and that benefit spreads out pretty well throughout the industry. Yes, during the show livestock is sold in the sales pavilion but in certain other buildings I have not seen it sold. The

Show has benefited industry as a whole.

210 sales pavilion is not the same as the stadium. Yes, individual animals are frequently exhibited at the stadium before going to the sales pavilion, and some of the livestock that is sold during the show week is handled in the yards proper and sold in another auction facility in the cattle division. A great deal of livestock is sent to the yards during the show time for sale. Yes, I think a good deal of grade stuff, so-

Livestock sold in yards show week in large volume.

211 called, is also sent here at that time as well as purebred breeding stock. Denver has a very extensive Large feeder auction sale of feeder cattle. In point of dollars there auction.

Trans.

**Stadium
necessary to
house show.**

**Rodeo does
not affect
decision.**

**Additional
income does
not affect
decision.**

is a large volume of livestock sold at the Denver show. There is also a large market for bulls.

212 The show generally starts the second Saturday in January and lasts until the following Saturday. Yes, the stadium is necessary properly to house and handle the show. It is here the public assembles.

213 The animals are not stabled in the stadium, but all of the barns on both side of Lafayette Street, as well as those on so-called Zone 9, are occupied. Yes, it does affect my viewpoint that a rodeo or public show is held in the stadium for which a charge is made to those who see it, for the reason that a rodeo or a show of that kind is not a stockyard service for which rates are charged. In my opinion, the stadium is not used and useful property, and the fact that it may derive income from the rodeo, does not in itself make any difference. My theory has always been that if a piece of property is not used and useful in the rendition of stockyard services and it is excluded for that reason, 214 that the expense and income should also be treated in like manner.

Q. Well, what I am getting at, of course, is this, that if this additional income did not come in to help carry the cost of the show, the Stock Yard Company from one source or another, would have to pay out additional money, would it not?

A. Well, if it saw fit to take up that slack and take care of a deficit, if there was any, it would do so.

215 (Witness continuing). There has been a deficit almost every year for the last ten or fifteen years in connection with the Stock Show. I do not know of any athletic contests having been held in the stadium since time of my testimony in the 1930 hearing. No, if there had been contests held and income derived therefrom during the light season,

Trans.

I don't think that would make any difference in my mind. All additional revenue that you can obtain simply helps the carrying charges on the property.

Yes, I know a stockyards company spends money for advertisements. From my own viewpoint I feel that possibly some classes of advertising would be all right, such as newspaper advertising to the effect 216 that they are conducting a stockyards.

Q. And one of the best advertisements, as the saying is, is a satisfied customer, isn't it?

Show as an advertising medium.

A. Well, that is a common saying.

Q. And if you have a good show and demonstrate a wide outlet, it is as good advertising as you can have at a stockyards, isn't it?

A. No, I don't believe that that class of advertising would come within what I would consider a modest or reasonable advertising expense.

Q. Is that merely due to the size or the nature of it?

A. The nature of it.

Q. Not the amount expended?

A. Well, no, not the amount of expense, but both taken together.

(Witness continuing). I know that buyers come to the stock show from various States. Yes, I think the feeders bought at the Denver show and shown at other shows in other sections of the country, have a tendency to advertise the breeding section from which 218 they come. Yes, I know that the distribution is very wide at Denver. Yes, I think feeders go from Denver as far East as Ohio.

Wide distribution of livestock.

Yes, I know Dr. John R. Mohler. He is Chief of the United States Bureau of Animal Industry, Department of Agriculture, and one of my superiors.

Trans.

Dr. Mohler's statement.

220

paragraph from an article written by Dr. John R. Mohler, which was published in June, 1930, in the Breeder's Gazette. As a matter of fact, I will read you, so the context will be clear, perhaps two or three paragraphs:

"In the industrial world a firm which expects to prosper and produce dividends does not use obsolete methods and equipment. Junking old machinery and remodeling old factories takes both courage and capital. But in the end such a course is the wisest and most economical.

"How is the livestock industry meeting this same situation? Is there a readiness to admit the obsolescence of types of livestock that no longer meet production needs and market requirements? Is there a willingness to discard former method for newer ones that are better? Is the livestock industry as progressive as it might be? **** There is evident need also for a closer relation between our standards for breeding stock and the utility value of the product. If, as now appears to be the case, quality in meat is an inherited character, we may wisely develop, within the breeds, strains of cattle, sheep and swine that will produce *meat of assured quality*. In any case the industry may wisely cull out, at once, the types that are plainly unfit in the light of present breeding and market standards.

"Naturally we look to the great stock shows as the supreme authority on animal conformation. Hence every means of stimulating entries by the best breeders adds to the value of such shows. And, conversely, any condition that discourages the most able breeders from showing their animals tends to place leadership in less worthy hands. Hence we should strive to encourage, throughout the industry, confidence in the competence and fairness of judging." **** "I am

Trans.

confident that the entire complexion of the live-stock industry in a given area can be changed by energetic work of the proper kind."

Do you agree with those statements, Mr. Christensen?

MR. MILES: Objected to, Mr. Examiner on the ground that the witness has not been qualified to express his opinion on these matters and has denied his qualifications.

MR. BOSWORTH: Mr. Examiner, he has testified with regard to the stock show property, so-called, and has, in the light of Mr. Miles' objection, presumed to designate it as not used and useful in stockyards operation. Certainly a query to him as to whether or not the stock show is a great instrumentality to which you must look for improvement of the herds, is a proper question, in view of his testimony in this case on the subject of used and useful property.

221 **MR. MILES:** His testimony was to the effect that these various utilities were not used and useful, although that is not the language, in the conduct of the stockyard operations, for which rates and charges were made and which rates and charges are now under investigation.

MR. BOSWORTH: Well, that necessarily involves, Mr. Examiner, the question of whether or not this stock show is a benefit to the industry as a whole.

MR. MILES: There is no rate or charge made for the conduct of this stock show set out in their tariff or rates and charges.

THE EXAMINER: What you say may be true, Mr. Bosworth, as the Examiner sees it, but as I understand it, the witness is not qualified as an expert along the lines of breeding and didn't testify anything concerning that on direct examination, so I sustain the objection.

Trans.

MR. BOSWORTH: Note an exception. (Continuing). Well, Mr. Christensen, you have heard the portion that I have read which I will read again:

"Naturally we look to the great stock shows as the supreme authority on animal conformation. Hence every means of stimulating entries by the best breeders adds to the value of such shows."

In your opinion, does it add to the value of the show to the industry as a whole?

MR. MILES: Same objection.

THE EXAMINER: Read the question.

(Whereupon the question was read).

MR. MILES: Now the Captain has, with his usual skill, injected into the record the inadmissible. Why prolong it?

THE EXAMINER: Objection sustained.

The Breeder's Gazette containing an article by Dr. John R. Mohler, published June, 1930, was marked for identification as respondent's Exhibit 2 and was offered and received in evidence over the objection of the Government as to its materiality.

224 (Witness continuing). Referring to my testimony yesterday concerning the loading and unloading docks, chute alleys, chute pens, I testified that the bulk of the loading occurs after noon at the yards and before the "Hot Shot" leaves in the afternoon, and then pretty well on into the night until all the trains pull out. The bulk of the unloading is generally done during the night and early morning, the same men do the loading and unloading at the stock yards and do other jobs around the yards. The cleaning gang, for instance, frequently assists in the load-

Loading after-
noon, unload-
ing at night.

Trans.

ing during the peak season and some time the scale gang assists after the scale is closed.

I have spoken of a river easement under Class B River easement facilities. It is not my understanding that the Stock Yard Company has parted with its right to occupy that 50 foot strip. I don't think there is anything in the deed that would prevent the Stock Yard Company from using that property for any purpose that did not interfere with the purpose for which it was deeded to the City and County. The deeds speak for themselves. My recollection is that the Stock Yard Company may still use that property for any purpose that does not interfere with the ingress or egress or the purposes stated in the deeds.

Q. As a matter of fact the Stock Yard Company is using that 50 foot strip now, is it not, on the river side and as a roadway?

A. It is possible for vehicles to pass around the west side of the railroad tracks nearest the river, and they may pass over this particular—pass over this strip of land, this 50 foot strip, although I haven't made any of the measurements myself, and I don't know whether they do or do not really use this strip.

(Witness continuing). The strip is not 50 feet wide at the top. I don't know whether the 50 foot measures from the toe of the slope in the river. That is an engineering problem. I have seen wagons on the portion of the roadway leading into the north end of the river dock but I don't remember that I have ever seen any vehicles pass around the west side. I have walked around there a great many times. There are some automobile tracks and vehicle tracks, but not a clearly defined roadway. I have spent about three-fourths of my time in my Denver office. Yes I do know that trucks do run on that area.

Trans.

the railroad track clear around by the sheep barns in connection with freight traffic. There are vehicle tracks all the way around the west side of the railroad tracks passing over the stockyards property and in order to get out at the south they have to pass over a strip of land owned by Swift & Company. There would be no means of passing all the way around over stockyards land.

Official
channel has
been benefit
to yards.

Put lands
above flood
level.

Sewer
system.

- Yes, I think it has been a benefit to the stockyards property to have this official channel established. I imagine it has been so constructed as to
- 229 prevent any flooding in that section of the property, and I don't think the flood waters ever reach the property since the river was improved in that section.
- 230 Yes, the bulk of the tracts designated No. 149, 156 and 162 was received by the Stock Yard Company in the exchange of property due to the establishment of the official channel. Yes, the old natural channel of the Platte River swung down almost to the railroad track in Unit 149. Yes, those tracts of land are filling up very rapidly, some of them are almost leveled up, and in Tracts 156 and 149 the part nearest the river bed was filled with gravel for the most part obtained in the construction of the official channel. The river was pushed further west. I don't know whether the Stock Yard Company was under the necessity of extending its sewer lines into the river, because I don't know the location and did not make an investigation of that.
- 231 Yes, sewers in stockyard operation are used for more than just carrying off refuse matter. They are used for draining purposes; rain and snow goes out through the sewer outlet the same as any other drainage or surface water. I do not know whether every pen is graded to a central manhole, but the purpose is to provide suitable drainage for the stockyard. Yes, I know that the cattle yard is paved; the drain-

Trans.

age seems to be quite efficient. In a general way I know the sewer outlets must cross the so-called Easement No. 162 and the Units numbered 149 and 156, because I know there are sewers there and they must have an outlet, but the exact location I am not prepared to indicate. No, my units do not in any manner conform to the Government Land Appraiser's zones. My numbers do not have any connection with any other designation which may be used by the Government or by the Stock Yard Company. The lines on Government Exhibit 8, I think, originated to indicate separate times of purchase.

No, the Stock Yard Company could not operate without an effective system of drainage and sewerage, could not operate very well; it would lead to an unsanitary condition, and I do not think the producer would willingly send his livestock to that market for sale. The better the facilities the more inclined he would be to patronize the market.

My Unit 148 is the same thing as Government Land Appraiser's Zone 5. It lies west of the river and west of the river easement and is shown on Government Exhibit 10. The easement in that particular case is deeded for the purpose of a roadway or street, and 235 only extends as far as 49th Avenue. No, I have no idea of the cost of a bridge across the river. The feasibility would be the same as a bridge across any other river of that width, which I imagine is about 200 feet with a 50 foot easement on each side. Yes, it is true that since the Stock Yard Company has the right to use the bridge for driving livestock and to have the easement vacated at any time it utilizes Unit 148, the barrier remains the river alone. Yes, I think the river isolates that tract from a practical stand-point, because in my opinion, it would be impractical to operate a portion of the stockyards segregated 236 across the river so far from the other portions of the

Patron wants up-to-date facilities.

The question of a bridge across the river.

Trans.

yard, and because it is separated from the other portions by a network of railroad tracks, and its distance and separation from the market, the trading center, would divide the operating operations, so that it would be, in my opinion, impractical to operate any stockyard facility. The two big packing houses are in between the cattle division and this tract. Yes, the tract is directly west of the sheep barn, across the railroad track, the river easement and the river channel. No, the railroad tracks in the center of the yards have not isolated the west from the east portion because there is a sub-way and a viaduct. I don't think the bridge would unify the yards to a great extent.

237 Washington Street on the west edge of this tract is an improved street. No, I have corrected my report and stated that I did not consider Pen 4212 as

240 manure storage. I think that that pen was designed as a cattle pen and is a very essential cattle pen for the reason stated, namely, for handling large droves of cows and calves and for handling shipments that may be shipped through, going to pasture. Yes, these large pens and the entire north end of the cattle pen area were effectively used during the Government cattle buying program.

246 With the change in transportation conditions I think there are certain areas that would be permissible to include in the stockyards facilities as areas for parking of automobiles. The parking space in front of the Exchange Building is probably adequate for the Stock Yard Company and the patrons who come to deal with the stockyard and market agencies and dealers. Yes, the tract west of the stadium on the Colorado & Eastern right-of-way is quite well filled with trucks and automobiles during certain days of the week by people who are principally those who have business at the yards with the commission

Pen 4212.

Parking space
permissible.

Trans.

men and livestock. Yes, I know that during certain days of the week, particularly during the peak season cars are parked clear up into Lafayette Street and on 47th Avenue and that the people walk down through the subway to get to the yards. I think that the trucks that bring livestock to the market always find room to park near the stockyards in some permissible place on the public street or on the so-called Colorado

248 & Eastern right-of-way. No, I am not familiar with the ordinance under which a line of trucks is not permitted to stop on the public highway. I regard much of the trucking as an outside transportation matter because much of the livestock is carried by independent truckers who do not own the livestock and receive their compensation from the owner for whom they are hauling and I think that there would be no obligation to provide them with trucking space.

249 at the market. Yes, I think the Stock Yard Company would have the right to own property that would protect its business. Yes, I think it is true that patrons of the yard, both shippers and buyers, are coming to the yards by automobile in increasing numbers and that truck shipments are increasing.

Truck parking.

Shippers and buyers come by automobile, increasingly.

Yes, gravel is essential in stockyard operation. Yes, I know that the Secretary allowed Unit 152 as a gravel pit in the 1930 hearing and that I am now recommending that it be excluded. It was my opinion then, and it is now, that it is not essential or needed or used and useful as a gravel pit for stockyard operation. A part was sold for a filling station but the 251 physical condition of the balance remains as it was at the time of the 1930 hearing.

Scale No. 7 in the sheep barn is used to some extent in the same manner as other scales. I do not think that my report on page 250 says that it is used exclusively by the packers. The scale records show that during the year 1934 46 drafts, 6,916 head of

Trans.

sheep were weighed on that scale and that it was open three days. Yes, that weighing was by the Stock Yard Company. My information is that additional livestock is weighed on that scale by the packers. I don't know of any additional weighing by the Stock Yard Company. I don't know whether the scale tickets on Scale No. 7 are consolidated with Scale No. 8 upstairs in the sheep barn. My information was taken from the scale records showing the weighing on each scale. No, there is nothing improper in having the scale records of an overflow scale go in with the records of Scale No. 8, but I would not have had that information.

- 253 No, I don't mean that because a scale or any other facility in the yard is not used constantly that it is not a stockyard facility nor that it should be eliminated because of that.

Feed lots.

I speak of commercial feed lots in the plural sense because they were built at different times and in two sections, one lying east of the railroad track and the other west of the track. Yes, both

- 254 are located in Zone 3. At the present time all the land is leased but I don't know what the arrangement is between Swift & Company who owns the buildings on the property east of the railroad track.

- 256 Yes, you usually find feed lots near a stockyard, particularly if it is a central market. They are patronized by owners of livestock who desire to feed and fatten them preparatory for market. The producer frequently finds that a little more maturing will increase his price. A great many livestock are brought into the stockyards that are suitable for further feeding and finishing. Yes, at a stockyard in the range country a good many two-way animals come in, which means fat enough to slaughter but animals which would benefit from further feeding. Yes, a well matured fat animal draws a

Trans.

- 257 better price than less matured animals, and if there was no need for a feed lot there would be no patronage. The fact that it is patronized by producers indicates that it is essential to the industry. The
 258 reason I say that in my opinion it is improper for the Stock Yard Company to utilize land for feed lot purposes is because the livestock that is held on that property is not for sale, they are not on the market; they may have been at the market and taken out of the stockyard and come back later on, but during the period that they are on feed they are not, in my opinion, at the stockyard as a public market place. No, I would not say that because livestock stops at a feed lot the flow of commerce has ceased, but during the time that it is on the feed lot it is not at the market place. The feed lot is the eddy of the stream but the livestock remains in the flow of commerce from the point of origin to the point of destination. No,
 259 assuming that the Stockyards will need land for expansion, and that the land is being held solely for that purpose, I would not say there was anything improper in the yard company utilizing that land in the meantime.

Use of land pending expansion of facilities, is proper.

- 266 In Government Exhibit 12 I have listed as Unit Water
 103 "General Water System" under partly used system.
 and useful facilities. The first paragraph refers to the original mains that were laid, or perhaps I should say to the system; I have not checked the number of pipes or the number of branches or mains; I am referring to the pipes that were laid under the original agreement with Swift & Company and Armour & Company inserted at pages 254 to 266, inclusive of Government Exhibit 5. No, I have no knowledge as to whether those agreements are in effect or are void and have been cancelled except what appears in these copies. Yes, the first agreement on page 256, dated in 1906,

Trans.

says that it shall be in effect for ten years. It is my understanding that the water plant is municipally owned but I do not know whether the Denver Union Water Company is in existence or not. The agreement of February 6, 1907, is an amendment relating only to leakages and repairs and the reading of meters. It has nothing to do with the amount of water.

268

Q. Do you know whether or not at the time an enlargement of the packing plants which are now the Swift and Armour plants took place and demands were made by that Company for an adequate supply of water without which they would not increase their plants, do you think that the producer was interested in this situation sufficiently to have part of the cost thrown on him?

A. No, sir.

Q. You do not think so?

A. No, sir.

Q. In other words, you do not believe that the producer is interested in the movement out of meat or the production of meat?

A. Yes, he is interested in that, but it would not be fair to collect from him the cost of building packing plants or increasing this water supply.

Q. Would it not be fair to him to do it if that was a necessary thing in order to build up a market outlet?

Government's objection on the ground that question asked for a conclusion of law was overruled.

Market
essential to
producer.

(Witness continuing). The question is based upon the assumption that it was necessary to build up a market outlet. If that was true why perhaps

Trans.

it would be a benefit to the purchaser, but I cannot see that the market outlet is in any way directly connected with the improvement of a packing house. Whether the improvements mean the buying of more livestock depends upon their nature.

270 Q. I think I used the phrase, if I did not I certainly intended to do so, increasing the capacity of the packing plant. Now, increasing the capacity means that they are more active buyers on that market, does it not, generally speaking?

A. Anything that creates a greater buying power on the market, I think, is beneficial to the producer.

(Witness continuing). This particular unit (Unit 103) is the old 12 inch main which tacks on to the city main at the corner of 46th and Lafayette Street. It was built jointly to serve the stockyards and the Swift and Armour plants. No, I don't know where that main goes. I could not locate it except that I noticed a few hydrants here and there. Yes, it serves the pen triangle south of the Exchange Building and by a lateral I understand it serves the Exchange Building but I have not checked these lines. This is an engineering function.

271 Yes, I think that even if it should develop that it serves in connection with other mains the entire stockyards property and that it taps a runoff to serve Swift & Company and Armour & Company, still that part that extends beyond the stockyard facilities would not be used and useful in the rendition of stockyard services. Yes, I think a fair way of allocating the physical property as it stands today would be on a basis of the amount of pipe that goes beyond the boundary line of the stockyards property. I think it should be borne in mind that the entire main, all the way from the City

Shippers
benefited by
anything
which in-
creases buy-
ing power.

Water
system.

Trans.

main, is serving the packers as well as the Stock Yard Company, and because of that joint use I have described, the facility is partly used and useful property. The part that is beyond the stockyards area is not used and useful. I could not say that if it is a 12 inch pipe that 4 inches is used and useful and the rest of it is not used and useful. Yes, water is a stockyard service. The question of whether a service rendered the packers is a stockyard service depends upon whether it meets the definition in the Act. Any service the Stock Yard Company performs outside the stockyard would certainly not be a stockyard service.

I only inserted these documents to show the division of cost. No, if the yard company was successful in getting Swift and Armour to pay a bigger proportion than the actual amount of main that they receive, I wouldn't have any objection. 275 So long as the yard company does not make any agreement which affects its services and which does not embody an unjust charge to the patrons, it might make whatever contract it saw fit.

I don't know whether or not there is a 16 inch main which practically parallels this 12 inch main. I know there is another main that comes in towards the northern end of the yard which is tied into this system and steps up the pressure. No, those mains are not regarded as partly used and useful. It is my understanding they are entirely on stockyard property. I have seen a great many fire hydrants but I can't remember the locations. Yes, I think the yards are pretty well supplied with water and hydrants throughout the yards and around the sheep and hog divisions.

I don't remember whether I was away when the K. & B. Packing plant caught on fire, or when the H. & M. Packing plant recently caught fire. I

Trans.

277 don't know how the Denver Fire Department got water to fight those fires. No, I don't want the Blacksmith Secretary to understand my recommendation with shop. regard to Unit 103 to apply to the entire water system.

In speaking of the blacksmith shop (Unit 119) and the fact that it is used by the Stock Yard Company and the general public, I mean by the general public anyone who might patronize the blacksmith shop. Yes, I have seen members of the general public patronize the shop within the last two or three years. No, I don't know whose horses were shod there. Yes, I know that those horses were horses which the commission men used in the 278 alleys, and also the stockyards horses are shod there. Comparatively speaking I don't know whether it is true that the bulk of the work in the blacksmith shop now has more to do with body and automobile truck repair than with shoeing horses. I know that the yard company operates the shop and that they have all, or a great deal of their blacksmithing done at this shop. I don't know whether the yard company makes the hinges for the pen gates there or not. I can't say how often I have inspected it but I 279 have passed the open door frequently. No, I didn't know that a new punching equipment to complete 280 the hinges had been installed a year or so ago. Yes, I believe the branding irons are made there. Yes, in the operation of a yard such as that of The Denver Union Stock Yard Company, a blacksmith shop is necessary. It is the outside service to the public that would not be necessary or incidental to the rendition of stockyard services. Yes, whatever income is derived from this incidental service goes 281 into the general revenues of the company and leaves less to be spread in rates.

Trans.

A good deal of the same thing is true with respect to the garage and auto repair shop, Units 131 and 132.

Western Weighing & Inspection Bureau office excluded.

Shipper interested in freight.

Sale of gasoline to public not objectionable

- 283 As to the chute house, I am recommending exclusion of the Western Weighing & Inspection Bureau office because it performs service for the railroad companies and not for the Stock Yard Company. It is connected with the transportation service. Yes, a patron of this market is interested in the freight charge he has to pay and the Bureau determines what freight charges are due on a shipment. I think they could operate without an office in the stockyards, but it would have to be quickly accessible at least to the loading and unloading chutes where they perform most of their services. Yes, I think it would be advantageous for it to be quickly accessible to the market agencies and dealers on account of the account sales and the purchases. I think it is a very logical place for them to have their office, but I can't say any other system would be detrimental. It is my understanding that the Bureau receives copies of all scale tickets. Yes, I think the Bureau checks the shipments for transit. I understand that it is their function to check the shipments to see if the shipment comes within the transit privilege. Yes, that privilege is a benefit to the shipper.

No there is no objection to the fact that there is some income from the sale of gasoline to the general public by the filling station, Unit 133. Yes, in my opinion, I think it would be advantageous and proper for the Stock Yard Company to have gasoline storage tanks and facilities for servicing its own equipment and as a convenience to the shipper who comes to the market also, but the fact that sales of gasoline and revenue are made and derived from sale to the general public does, in my

Trans.

opinion, prevent it from being used and useful.

286 Although the income may assist in carrying the cost and lightening the burden on the rate payer, it is not a question of revenue but is a question of use and investment in so much equipment that probably would not be necessary for servicing a stockyard company's equipment alone. Yes, there are only two pumps, one with cheap gasoline and 287 one with a better grade. I don't believe it would be necessary to have as much equipment and ground devoted to that purpose if it were for the Stock Yard Company alone. I couldn't name how much less equipment or land would be necessary. I don't think it is necessary to have a passageway on both sides of the pumps. I don't think it would slow up 288 operations very much if the trucks had to get in a line so that a truck wanting water and air would have to wait until the truck taking gasoline got out of the way.

No, I can't segregate any portion of the building or equipment of the blacksmith shop that would not be needed for stockyards use exclusively. Blacksmith shop necessary.

When I say in Government Exhibit 7 that facilities are adequate for the functions for which they are designed I mean that the cattle pens, sheep and hog barns are adequately good, but I would not say that at all times they are adequate from the standpoint of size and amount to handle all cattle, sheep and hogs efficiently. There may have been a single day or hour or some short space of time when the yards were full but as a practical proposition I consider them adequate, both in size, construction and condition for the ordinary flow 289 of livestock through the stockyards. Yes, a continuous heavy run would have a tendency to cause the yards to fill up unless they were moved out very 290 promptly. Yes, it has been my experience that when

Pens not adequate at peak times.

Pens adequate in size, construction and condition.

Trans.

**Carryover
is large at
peak seasons.**

**Sheep barn
inadequate
during peak
season.**

**Hog
division.**

these heavy runs occur there is more carryover stuff than there is normally at other seasons of the year. Yes, although I have classified the triangle south of the Exchange Building as within the cattle area, it is used extensively for sheep during the heavy sheep movements. I think the sheep barn is entirely occupied at certain times and this triangle has also been occupied. Yes, it is generally understood that a covered inclosure is always more appropriate for sheep, although cattle and hog facilities may

292 be used alternately. I think the producer's attitude is that he would rather have his sheep in a covered pen if they have to be held for any great length of time or during inclement weather. No, I don't think he wants to take any chance that might be detrimental to his interests.

The ground floor of the sheep barn constitutes the principal sales section of the hog division. Part of it is set aside and used for that exclusively. Yes, I mean that irrespective of Hog Barns 2, 3, 4 and 293 5, hogs are yarded and sold in the sheep barn regularly. Yes, the five-year moving average shown on pages 3 and 4 has trended upward since 1925; 294 1934 was the biggest sheep year in the history of the stockyards. 1933 was the largest hog year, and October, 1934, was the largest cattle month.

296 I stated in Government Exhibit 7 that Government purchases did not represent a corresponding reduction in the potential supply since a large number of this class of livestock would be shipped under normal conditions and many would die under 297 ordinary conditions. Yes, I think it is true as to all markets that if, on January 1, 1935, there was 16% less of all species on the farm, it is reasonable to assume that the reduction of all species will be 16%, although as I have stated there might be livestock imported into this particular trade territory

Trans.

that would offset some of the loss and make a further reduction at some other market. Yes, the figures shown on page 4 of my tables of 490,825 head of Government purchases represent the abnormal movement in 1934. No, my tables do not show any abnormal movement due to the drouth apart from the Government program. My opinion is that it would be proper for a stockyards company to hold land for expansion when it is apparent that the property would be absolutely needed and utilized, but I think it should only come into the rate base when it is actually needed and put in use. Yes, from a stockholder's viewpoint I think it would be a different proposition altogether and that the management might be considered derelict in its duty if it waited until it needed the land to acquire it. No, I don't think the management would be derelict in its duty to the producer to wait, because the present users of the stockyards are not providing for facilities for future generations. I cannot say that I think it is more advantageous for the producer to stand the carrying charges of property eminently necessary but not presently used than to have a higher cost of the property included in the rate base if the yard company had waited to acquire the property. I think the producer would have to take the consequences when he required services. No, I don't think the right of eminent domain affects the situation in my mind. From the stockyards stockholders' attitude, the fact that the yard company may not have the power of eminent domain might have some bearing, but as to the stock yard services to the shippers and the users of the stockyards for which rates are now prescribed or under investigation, I would say that it would have no influence on my decision. I think it is up to the stockholders whether or not they want to provide for the future but I don't feel that

**Expansion
land.**

**Lack of
power of
eminent
domain.**

Trans.

any such property should be included in the rate base until it is used and useful and actually brought into service and the shipper is able to derive some benefit from it.

Truck
shipments
increased.

307 I do not know whether or not economic conditions existing in this country since 1930 have affected the consummation of the Stock Yard Company's plans to utilize certain tracts. I have not made any study of economic conditions or the advisability or reasons why certain improvements have not been made. As to whether or not there have been any shifts in the nature and type of receipts at Denver since 1930, there has been a decrease in the rail shipments and an increase in the truck shipments. Also on cattle there was quite a definite decline in the receipts from 1926 to 1933, with an increase of rail shipments from 1933 to 1934. The receipts of cattle by truck have increased during that period. I think the increase in cattle is due to the Government purchases in 1934. Yes, I show a constantly increasing five-year moving average on all species since 1930.

311 Yes, I suggest an enlargement of the hog facilities in a certain manner. As to whether or not it is a management function as to how the enlargement shall take place, I presume the management would decide what they would do under certain circumstances.

Q. You conceive it the duty of the Department of Agriculture to outline the method of expansion?

MR. MILES: Now, Mr. Examiner, aren't we trespassing upon fields of law?

MR. BOSWORTH: No, we are not.

MR. MILES: I must disagree with you, Captain, I am sorry.

Trans.

MR. BOSWORTH: Well, Mr. Examiner, our position is this with regard to it, and we want it clearly understood in the record and understood throughout that if Mr. Christensen is making the suggestion out of the kindness of his heart, that is one thing, but if he is appearing here as a Government official suggesting to the management of the Denver Union Stock Yard how needed enlargements of its property shall take place, we insist that neither he nor the Department of Agriculture has any such function or power or right under the Packers and Stockyards Act of 1921

MR. MILES: If that be true, it is because of the law. You are now asking this witness his opinion on a matter of law.

THE EXAMINER: As the Examiner understands it, Mr. Christensen has been testifying in this matter, giving his own opinion and not been attempting to speak for the Department of Agriculture. If Mr. Christensen can elaborate on what he stated and as to what his views are, he may answer under that theory.

MR. BOSWORTH: Now, there is one other thing I would like to get settled right here, Mr. Examiner. Do we understand that Mr. Christensen is not testifying here as a member of the Department of Agriculture staff?

MR. MILES: Emphatically, he is. He is giving his opinion.

THE EXAMINER: He is a member of the Department of Agriculture staff, but he is testifying as an expert, giving his own opinion in this matter, and as I understand it, he has not attempted to testify as to any views of the Secretary of Agriculture.

Trans.

(Witness continuing). I am not attempting to say what the Stock Yard Company shall do in the way of expansion or improvements. I am offering this to show how additional room could be acquired without extending the facilities over more land areas. It is my idea of how I would do it if I was 314 operating the stockyards. It seems to me that it would be the logical thing to double-deck the hog facilities and the most economical thing that could be done to provide for the increased receipts if and when this expansion became necessary. No, I don't know that double-decking of the hog barns has been abandoned by the management of the stockyards. No, the suggestion contemplates the reallocation of the space that would be available in this recon- 315 structed facility.

No idea of cost of double decking.

No, I have never figured out the cost of double-decking. I have made no cost study and do not have any idea of the difference in cost between expanding the facilities onto the territory north of Race Court as against double-decking. Yes, taking the service into consideration, I will admit that it is to the advantage of the rate payer to have the expansion carried forward in the most economical manner, and I mean by "service" having the trading centers on each species so located that they can be handled advantageously alternately in adjacent facilities.

Loading and unloading facilities.

The loading and unloading facilities now known as the C. & S. Railroad Dock, including the chute alley and the alley west of the chute all would be approximately 50 feet wide. The alley is about 14 to 16 feet wide and therefore eliminating the alley adjoining the chute alley, the entire space devoted to the chute and chute alleys is around 34 to 36 feet wide out to the railroad track. A city street 317 is from 50 to 60 feet wide. That area is rather

Trans.

congested at some times when the trucks are coming in with livestock to be unloaded at the truck unloading chutes. No, I don't think that my plan would tend to increase the congestion because it would widen the traffic artery. No, at the present time the truck unloading does not move through 318 that area. I am advocating the removal of only that portion of the C. & S. Dock that extends as far north as the subway. No a 36 or 40 foot space is not sufficient for truck unloading, but my plan would create a through line instead of a stub as 319 it now is. No, I don't think it would require the trucker to drive about two miles to get to the Exchange Building. If he didn't want to drive he could walk across the viaduct. Yes, that would mean he would have to leave his truck some place. No, he could not leave it at the unloading space without congestion. He would either have to provide his own parking space or utilize parking space furnished by the Stock Yard Company.

321 On page 34 of my report I say that more complete utilization of marginal areas within Tract 1 would be satisfactory from the standpoint of the cattle division. Unit 158 is one such marginal area. This could be utilized to good advantage for additional cattle pens if and when needed. There is also a little strip on the west side of the yards, Unit 159, which is approximately 25 feet wide and 322 55 feet long. The balance of the strip is not over 10 feet wide. No, I don't think there are any pens in the stockyards regularly used for cattle, not including the catch pens around the scales, that are 10 feet in width. The normal sized pen in the cattle division is approximately 30 by 35 feet. No this strip would not even hold one pen of the size that the Stock Yard Company has found best suited to its use on this market.

Alleys frequently congested.

Expansion land in Zone 2.

Trans.

With regard to Tract 158, the lower end has an extreme width of 25 feet between the Burlington right-of-way and Alley 43, and opens out into Alley 43 at the north end where the largest dimension of a cattle cut-out division is $112\frac{1}{2}$ feet, approximately. Yes, truck-outs have increased at the Denver yards, and if the truck-out divisions were enlarged the expansion might be located on this tract adjacent to the present truck-out facilities. Yes, it is advantageous to the industry to have a cattle truck-out division with access to a paved road and to the main arteries out into the country.

Fire protection.

- 324 Yes, I know the Chicago fire in the stockyards recently was rather serious and stripped the cattle yards pretty completely, but I do not know whether or not since that time the underwriters are insisting that you maintain more than Alley 43 as an access to the north end of the property. I have not consulted with any of the underwriters.

Marginal strips of land.

- There are some other small marginal strips. One is down close to the Exchange Building extending from the south end of the Burlington dock, which is 325 simply a small passageway. It is indicated as Unit 157 and is approximately 5 feet in width, just a small passageway. I agree that it would not be suitable for additional pens. I think its best use is for a pedestrian way. No that is not available for the expansion of your cattle facilities. It is necessary for the stockyards men to use that passageway to get up to the unloading dock.

- 326 Well, Unit 118, being a strip along the east side of railroad track No. 28, which is now used as a roadway and for storing stockyards building material is not entirely utilized and could be used for expansion of the cattle division. It would take approximately 16 to 20 pens in a single row if the old material now piled on the tract were moved and

Tracts.

327 stored at one end. Yes, I have observed the use of that tract the past year. Yes I know that on the south end of that tract, close to the carpenter shop, the Stock Yard Company manufactures its concrete posts for its pens, but in drying they are stored over only a small part of the southern end. Yes, the D. & S. L. and the Northwestern terminal comes in on Track No. 12 and connects with Track 4 and Track 28 of the Stock Yard Company, but I have not been advised by anyone in the stockyard office that Tract 118 is being held for unloading docks for the Northwestern terminal, but I drew my own conclusions
328 from the location of the railroad track and the space allowed in there, that that property had been left there for a loading and unloading dock for rail shipments, but the particular railroad was not mentioned.

Re-direct examination

The feed lots occupy the northerly portion of Zone 3, which is designated as Tract No. 146 on Government Exhibit 8. They are operated by a lessee for feeding livestock for various people who buy livestock or have livestock that they want to prepare for market. According to my information, the grain elevator and buildings, office buildings and pens and inclosures on the area lying east of the railroad track were built by Swift & Company and were given
329 over to the present lessee. The balance of Zone 3
330 is designated on Government Exhibit 8, as Unit 153. It is vacant land, mostly smooth; the northeast corner is elevated and has not been graded down. That is where the gravel deposit is located. Yes,
331 gravel is being removed from that area currently.

The Western Weighing & Inspection Bureau is a railroad agency and its functions are to check the weights and the condition of the livestock to see that the railroad companies get proper revenue and

Trans.

ascertain the extent of injuries to livestock when
 334 it is loaded or unloaded. It was set up for the benefit of the carriers.

In 1934 there were received 708,988 hogs and 2,
 108,655 sheep, or a total of 3,817,721. A total of 765,417 cattle and calves were handled in 1934. The area of the hog and sheep division is only about one-fifth or one-sixth as large as the cattle area. The trend of the receipts of cattle during the past five years, exclusive of Government purchases in 1934, has been generally down.

No objection to manure sales.

No, the Government has no objection to the yard
 343 company selling manure to the truck gardeners. I think I testified that whatever income is derived therefrom lightened the burden of the rate payers. No there is no particular objection that the yard company makes the haulage of the product available to the purchaser.

Peak load.

344 Yes, I think there is such a thing as property being used and useful when it is only used at great intervals and especially when other facilities especially for the service are available. I do not think a stockyard company is required to provide for occasional peak loads. I believe there is a practical point beyond which a corporation should not be required to go to provide for some unusual and some extreme condition. What I call a peak load would be the maximum receipts that have ever been received. Yes, I am basing my testimony upon a conception of a peak load being an unusual situation. Yes, I am familiar with the daily peak load in the electrical industry; that is not unusual, it happens daily, and in the street car industry there is a daily
 345 peak load. Yes, in the livestock industry of Denver there is a point within each year when you receive the greatest amount of livestock during that year. If you call that a peak load why, they occur annually

Trans.

and it might occur weekly and it might occur monthly. If you are talking about a peak point covering two or three months, that occurs every year at Denver. It is equally well defined in the case of sheep. The hog receipts are not so heavy and do not fluctuate as widely as cattle and sheep. No, I do not have in any of my tabulations and exhibits any statement of the receipts by months showing the lowest and the highest months in each year. Yes, I know that cattle fluctuate very widely in the Denver market, and so do sheep.

348 I don't see how the Western Weighing & Inspection Bureau benefits the producer any. The railroad companies are obligated and do carry on their own part of the work. They have this agency to check up for their own benefit.

Q. If you were a purchaser at this market and a patron from the standpoint of purchasing, and found that by virtue of the Western Weighing & Inspection Bureau your transportation cost was \$50 less per car due to the transit arrangement because that Western Weighing & Inspection Bureau could establish the identity of your shipment, would you not think that was a benefit to you as a patron of the market?

A. No, I don't feel so any more than the benefit that I would derive and be entitled to from the railroad companies in carrying out the orders of the Interstate Commerce and their schedule of rates and charges for transportation services. It occurs to me that the manner in which the railroad company carries out its obligations is not an additional benefit to the producers or the shippers of livestock.

(Witness excused).

Trans.

350 MR. JOHN A. ZELINSKI, a witness called by the Government, testified as follows:

I am the principal valuation engineer for the Packers and Stockyards Division of the Bureau of Animal Industry, and have been employed in that capacity since the middle of August, 1934. I reside in Washington, D. C. My duties are to take responsible charge of the preparation of valuation reports in connection with rate proceedings under the Packers and Stockyards Act. My valuation reports cover all kinds and classes of property, structural property and land in general.

Qualifications.

351 The witness then gave his qualifications, commencing from his graduation from Ohio State University with the degree of Civil Engineering. The witness further stated that he was supposed to have graduated with the class of 1912, but was forced by financial reasons to work for a couple of years prior to graduation, during which time he was Assistant County Engineer of Lake County, Ohio; after graduation he was employed for six months by a consulting engineer in sanitary engineering such as sewage and garbage reduction plants; thereafter he became Chief Draftsman for a proposed traction railroad, but that he never got beyond the blueprint stage on account of financial difficulties. He then entered general engineering practice, including municipal work, paving work, waterworks, and was City Engineer of Painesville, Ohio; he also looked after the construction in part of the Diamond Alkali Company plant at Fairport, 352 Ohio. In 1916 he left Painesville and entered the employ of the Interstate Commerce Commission as Junior Land Appraiser, leaving that service in 1917 to enter the army, but returned in 1919, leaving the service shortly thereafter to become Construction Engineer for the Diamond Alkali Company, where

Trans.

he stayed for a year in charge of construction of a general mill building suitable for a chemical plant and of a small switching railroad owned by the Company; in November, 1920, he returned to the work for the Interstate Commerce Commission, in the Land Appraisal Department, where he successively held all of the positions from Junior Land Appraiser to Assistant Supervisor of Land Appraisal. In January, 1928, he left the service of the Commission to become Assistant Director of Research for the National Association of Owners of Railroad and Public Utility Securities, in which capacity he appeared before the Commission in matters where the organization was interested, particularly in accounting and evaluation matters. In October, 1929, he resigned that position and opened up an office as a practitioner, consultant on railroad and utility regulation, and was so engaged until August of 1934, since which time he has been in his present position with the Department of Agriculture. While acting as a consultant he was employed by the Department of Agriculture, various railroads, and the Department of Justice.

(Witness continuing). I have appeared as witness in the valuation cases of the Omaha Union Stockyards, St. Joseph Stockyards, Sioux City Stockyards and I have made appraisals at Cleveland and Wichita, where there was no formal rate hearing. In all of those cases, except at Wichita, I appeared as a witness on land only. I also appraised the structural property at Wichita. In the present case I was in charge of the appraisal on both the land and structural property, but of course I did not do all of the details myself.

355 I first began to investigate the land values at the Denver stockyards sometime in November, 1934, at which time I received from the Bureau of Ani-

Method and
time spent
at Denver.

Trans.

mal Industry a transcript of the record of the prior hearing, with copies of Exhibits, etc. I also went to the Interstate Commerce Commission and obtained such information as it had on railroad valuations in Denver and obtained permission to get access to further records in Denver in charge of the Commission. I came to Denver about January 7th 356 and left about February 8th, 1935, and during that time I divided my activities between the land work and the supervision of the engineering and the inspection of the property incident to both phases of the work. (Land and structural property). I did not do actually *any of the detail* inventory work. That was done by a corps of engineers who consulted me daily. I spent about half of my time on each of these phases of the work. I then spent about a week in our field offices in Kansas City, arranging for the compilation and the pricing of the engineering report and made some arrangements for the preparation of map work and calculation of areas incident to the land appraisal. I then returned to Washington shortly after the middle of February, and for a period of three months devoted a large part of my time to bringing into one complete unified whole both the land and engineering appraisals.

357 The elements going to make the land value, are the elements that a particular piece of property possesses that give it a certain serviceability incident to making a proper development on the site according to the particular neighborhood in which it is located, or according to the particular utility to which it might be devoted. The topography and 358 size and shape enters into the value, the location generally in respect to the highways and railroad trackage and also with respect to certain centers of value or development in the particular part of the city, if the property happens to be located in a city,

Zelinski's
elements of
land value.

Trans.

the general nature of the surrounding development, the use to which the surrounding property is devoted, the improvements in the community, such as schools and churches, fire protection and matters of that kind, are elements of value. I think practically all of these elements apply to the value of the Denver stockyards property. This property is of course affected by the condition of the trackage, the conditions of the street accessibility, the condition of the available outlets for the disposal of sewage, the availability of water and paving, street car service and things of that kind, all of which I think I enumerate in the text of the land report which I prepared on this property.

"I made an inspection of the lands of the Company on foot. I first made one general inspection to familiarize myself with the actual lay of the land in so far as its street access and trackage and topography were concerned, and, of course, the use of the property itself and the use of the surrounding lands in the stockyards vicinity. I then proceeded to interview the Interstate Commerce Commission appraiser here whom I knew had assembled a large volume of data, sales information of property in the vicinity of the Stock Yard Company. This was partly the same information, partly supplemental information to that which I had abstracted from the record of the prior proceeding and after securing this data I, incidentally in connection with securing it, spotted the location of this data on a map which I had. I then proceeded again to go over the property and note the location of the data as far as its relation to the lands of the stockyards was concerned. I also noted in connection with prior proceedings that data had been gathered or referred to some distance from the stockyards location and to familiarize myself with the lands that were involved in those locations I made inspections of those lands.

Trans.

as well in order that I might satisfy myself as to whether there was any influence to be had from those properties in determining the valuation of the Denver stockyards and also to get a better perspective of the general value situation in the north-easterly part of Denver. Now, having inspected these sites that were in the sales data and supporting data, I again made further inspection of the stockyards property in connection with the inventory which we were making of the physical structures, familiarizing myself, of course, in greater detail with the roads and the location of the sewers, water, and such other elements and factors as I thought might have a bearing on the land valuation."

- 359 Yes, I prepared a written report of my investigation of land values and certain maps. I submitted the maps and had them checked as to areas by the stockyards engineers, so that there was an agreement as to what the areas of the respective zones were, and after discussion and tentative zoning with Mr. Shoemaker and Mr. Pexton, we were in agreement as to how the property should be zoned for the purpose of evaluation.

- 361 My first exhibit is a map on a 200-foot scale outlining the boundaries of the stockyards property and the limits of each of the zones into which the property has been divided, each zone being colored in distinctive color. This zone map was prepared by our engineers in Kansas City under my direction.

Govt. Ex.
20 offered
and received.

The map was marked Government Exhibit 20 and 361 was offered and received in evidence.

The next exhibit is a map prepared by me, using the prior exhibit as a base, and upon which there has been extended the subdivisions of property in the vicinity of the stockyards and south thereof, showing the streets and block numbers and each

Trans.

362 of the zones in the appraisal in a solid color. Also the location of supporting data which is referred to in the text of my report. Each of these supporting data is given a distinctive number corresponding with the number assigned to it in the land report.

The map was marked for identification Government Exhibit 21, and was offered and received in evidence.

The zone map and zoning ordinance of the City of Denver was marked for identification as Government Exhibit 22, and was offered and received in evidence.

Zoning Ordinance.
Govt. Ex. 22
received.

363 (Witness continuing). My last exhibit is the text of the report itself. It shows the total value of the stockyards property as appraised by me in two places, in the report. The first is an unnumbered page preceding the report, headed "Summary of land appraisal, The Denver Union Stock Yard Company, Denver, Colorado." It is a tabulation by zones and also shows the total area and the total

364 value. The zone numbers correspond with the zone shown on the map. This appears again on page 18 of my report.

I valued the lands of the Stock Yard Company as Lands valued naked, unimproved vacant land, stripped of all improvements which we inventory in our engineering report. I considered the situation of adjoining property unchanged, with all buildings thereon in place.

366 (Witness continuing). I give a total acreage of 131.045 acres, and I included all the lands, not eliminating any of the lands that Mr. Christensen testified were, in his opinion, not used and useful. The total value as found by me is \$728,284.

Government counsel then asked the witness to read into the record his statement beginning with numbered page No. 1 of his report, as follows:

Trans.

**Method of
appraisal by
Govt. land
witness.**

367 **METHOD OF APPRAISAL .**

to "In general the method used in appraising the lands of The Denver Union Stock Yard of Denver, Colorado, has been that laid down and approved by the Supreme Court of the United States in the Minnesota Rate Cases, which is a method of valuation applicable to the appraisal of public utility or quasi public utility properties. It has been the endeavor of the appraiser to base his values upon the values of similar adjacent and/or adjoining property.

"The properties most similar to the lands of The Denver Union Stock Y~~ard~~ Company are those lying east of Washington Street and north of 40th Avenue extending across the Burlington right-of-way to the Union Pacific right-of-way in the northerly portion of the City of Denver, and just south of the Adams County line.

"The industrial lands south of 40th Street and those manufacturing and wholesale lands extending into the business district of the City of Denver were deemed by the appraiser to be too remote to have any reflective influence upon the lands under appraisal. Sales of property in the general vicinity of the stockyards have been investigated and their locations are platted in a red color upon the land appraisal sales map which accompanies this report. These have been identified by numbers shown on the map which correspond to the numbering on the individual sales data attached hereto.

"In view of the scarcity of sales information during the last two years (the depressed business conditions have resulted in a stagnation of normal sales), this class of information has been listed over a period extending generally as far back as 1920, in order that normal conditions for the date of the

Trans.

appraisal might be approximated. Some of these sales are of little, if any, probative worth in determining industrial land values such as those in the area under appraisal, but they have aided the appraiser in getting a perspective of values for the North Denver area in which the stockyards are located."

I think at this point I might make this statement that locally the area generally is called East Denver, as Mr. Bosworth stated this morning.

"It is for this reason that while not weighing in the forming of a judgment on the actual unit values determined upon for this appraisal, they are listed for comparative purposes.

GENERAL DESCRIPTION OF THE LANDS UNDER APPRAISAL

"The lands of The Denver Union Stock Yard Company are located just inside the northerly corporate limits of the City of Denver and about three miles northeasterly of the center of the intensive business district of the City, which locally is considered to be between 15th and 17th Streets in one direction and between Champa and California Streets in the other.

General
description
of lands.

"The main body of the yards lies between the main line right-of-way of the Chicago, Burlington & Quincy Railroad on the easterly side and the channel of the South Platte River on the westerly side and extending from the Colorado & Southern right-of-way on the south to Race Court on the north. In addition there are a number of detached parcels south of the Colorado & Southern right-of-way and west of the Platte River and an important area located east of the Burlington right-of-way and north of 46th Avenue, which will be later described as the horse and mule division.

Trans.

"Within the confines of the general area first described the stockyards are bordered on the west by the packing house properties of Swift & Company and Armour & Company, and in part by the abandoned site of the Blayne-Murphy Company, which is now the property of the Cudahy Packing Company. Across the right-of-way of the Burlington on the east, and opposite the center of the main area, is located the plant of the Cudahy Packing Company, successor in title to the Blayne-Murphy Company. West of the South Platte River, opposite the main body of the yards, are also to be found the plants of the smaller packing companies known as the K. & B. Packing Company and the Capitol Packing Company. South of the Colorado & Southern and fronting 46th Avenue is the plant of the Pepper Packing Company, successor in title to the Western States Packing Company. In this area is also located the plant of the Union Rendering Company, which adjoins both the South Platte River and the Colorado & Southern Railway.

"North of Race Court and adjoining that thoroughfare is a portion of the stockyard area which is devoted to feed lot activities and across the Adams County line and north on Franklin Street are other small packing plants and feed lots. The area immediately adjoining the stockyards ownership on the north is the location of the Riverside Cemetery. A small area of stockyard property lies east of the Burlington right-of-way and the intervening County Road No. 83 and south and west of Race Court, which will be further described as Zone 10.

"East of this property are considerable areas of vacant level land which in turn reach almost to the industrial properties bordering the Union Pacific and Northwestern Terminal right-of-way. South of

Trans.

the Cudahy Packing Plant, heretofore mentioned, east of the horse and mule division, is a modest residential sub-division known locally as the town of Elyria. This is interspersed here and there with small retail stores, garages and the usual small business activity incident to a residential location.

"Immediately south of 46th Avenue and east of the Burlington right-of-way lie the Union Pacific Shops and grounds and an industrial development promoted by the Union Pacific Railroad, which includes such industries as the Purina Mills, the Colorado Animal By-Products Company, and minor industrial businesses, such as lumber companies, fuel yards, gasoline stations, etc. Further south lie scattered industrial developments covering such activities as feed mills and elevators, iron foundries, metal works and the like.

"West of the South Platte River beyond Washington Street there is also a modest residential development suitable for the housing of the various classes of employees needed to serve the stockyard and packing house industry and the miscellaneous manufacturing development in the general vicinity.

"Within the actively used portion of the yards the stockyards are directly connected with the packing plants by special stock driveways and viaducts, which are so placed as to avoid any interference with the vehicular traffic, reaching all of these establishments. The Cudahy Packing Company plant, above referred to, is likewise reached by means of an overhead viaduct traversing the pen areas and the tracks of the Burlington Railroad as well. Both the yards and the packing plants are served by the inter-connected railway facilities of the several trunk line railroads which enter the city of Denver and the trackage facilities of the Stock Yard Company itself which are generally used by these railroads.

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Accessible to highways.

"The lands of the Stock Yard Company are accessible to improved highways on their outlying boundaries and the interior access is furnished through roadways on the lands of the Stock Yard Company itself, or lands owned by the railroad companies which adjoin. The accessibility will be discussed further under the caption of 'Highways.'

Exchange Building.

"The Exchange Building, which is a modern office building, is located in the southerly portion of the yards, about opposite 47th Avenue, and is reached by means of a subway continuation of that street from its intersection with Lafayette Street, which latter passes through the main portion of the horse and mule division. The stockyards car line of the Denver Tramway Company serves the yards and has its terminus near the intersection of Lafayette Street and 47th Avenue, the equivalent of one block from the Exchange Building, with the service adequate during ordinary business hours and frequent during the rush hours. This line connects in the business district with others where transfer is possible to all parts of the city.

Growth of population.

"The City of Denver, Colorado, has a population approximating 300,000 people in its corporate limits and 350,000 in its metropolitan area. The growth of the city disclosed in its population, is evidenced by the following figures of the United States Bureau of the Census:

| | |
|-------|---------|
| 1900— | 133,859 |
| 1910— | 213,381 |
| 1920— | 256,491 |
| 1930— | 287,861 |

In addition the metropolitan area had a further population of 23,841 in 1920 and 42,900 in 1930. While the rate of growth has slowed perceptibly in the last fifteen years, Denver has generally shown

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a healthy and progressive expansion. Such a condition, of course, makes for improvement in land values in times of prosperity and has a tendency toward stability even in depressed periods such as we have recently experienced.

"Facilities are available in the City and in the vicinity of the stockyards district, as well as for all of the needful utilities, necessary to an industrial location. The labor supply is plentiful and various, and labor troubles offer no problems. Adequate housing, school and park facilities for this population are provided. While the City is not dependent upon one industry or upon one group of industries, the leading industry in the City in total volume is the foodproducts industry, particularly meat packing. The large percentage of home ownership by industrial workers is a stabilizing influence upon the labor conditions.

RAILROAD FACILITIES

"The Denver Union Stock Yard lands are served in part over railroad trackage owned by the Stock Yard Company itself, and in part by the trackage owned by the Chicago, Burlington & Quincy Railroad, the Union Pacific Railroad, the Colorado & Southern Railway, and the Northwestern Terminal Railway Company. These facilities are all interconnected and are available through interchange and switching to the other trunk line railroads which reach the City of Denver. These are the Atchison, Topeka & Santa Fe, the Chicago, Rock Island & Pacific, the Denver & Rio Grande Western and the Denver & Salt Lake Railroad, which leases the Northwestern Terminal Railway Company in Denver.

R. R. Track-
age yard
owned by
Yard Co.

"The Stock Yard Company owns no rolling stock or equipment so that the switching services are per-

Excellent
trackage
facilities.

Trans.

formed under a joint agreement by the railroad systems named above. Switching rates are modest and on competitive traffic, they are absorbed by the line-haul railroads. This trackage provides excellent service advantages for the site and, with the transit privileges provided for in the railroad tariffs, the location is favored with a rate advantage as well.

**Dotsero
Cut-off is
important
improvement.**

"Lately the completion of the Dotsero Cut-off has improved the railroad facilities of the Denver area. In conjunction with the Moffat Tunnel this new line reduces the distance between Denver and Salt Lake City about one hundred and seventy-five miles and shortens the time approximately eight hours over the Denver and Rio Grande Western. This has brought about certain rate reductions between Denver and Western Colorado and enables the Denver market to reach additional traffic as well."

**Transit
privileges
at Denver.**

"While there is a perennial attempt by the Missouri River markets to secure similar transit privileges as those available at Denver, up to the time of the writing of this report these efforts have not been successful, although it appears that they might shortly prevail. Nevertheless, this rate feature has proved to be a distinct advantage to the Denver location up to the present time."

Right there I might add that I have since been informed by Mr. Pexton of the Stock Yard Company that the transit privileges will probably be accorded to the Missouri River markets about July 15th; that he understands that the new tariff will be filed on the 15th of June and will go into effect in about thirty days.

**Date of
valuation.**

Q. While you are stopped right there will you tell us as to what date was this valuation?

A. As of January 1, 1935.

Trans.

(Witness continuing). These railroads provide excellent transportation facilities for a very large area of range country tributary to the City of Denver, where livestock is produced, that is, livestock is produced in the ranch country and not in the City of Denver, and to a farming area where it is finished for the market. In addition they are arteries for distributing livestock for stocking and feeding purposes to the widespread farms, ranches and feed lots accessible to Denver. The transit facilities also enable the ready movement of the stock at favorable rates to eastern and western packers in the consuming centers. While the switching services are performed by the railroads under the joint agreement, the loading and unloading of livestock is handled by the Stock Yard Company under a per car arrangement with the railroads. The Stock Yard Company, however, furnishes the necessary docks and chute pens incident to the performing of this service.

HIGHWAY FACILITIES

"The Denver Union Stock Yard district is well located with respect to improved vehicular highways insofar as its outside boundaries are concerned. 46th Avenue in the southern limits of the area is an improved paved highway carrying the east and west traffic and connecting with Washington Avenue west of the yards and with the stockyard roadway crossing what will later be described as Zone 6 to reach the improved roadway serving the Swift & Company and Armour & Company packing plants, as well as the main yard area through the center of this development. East of the Burlington Railroad right-of-way 46th Avenue connects with Brighton Boulevard and York Avenue, important north and south arteries on which traffic moves from the main portion of the City of Denver, the first of which

Trans.

provides a connection from Downing Street by way of 38th Street as well. Brighton Boulevard connects with the County road No. 83 near the northeasterly portion of the yards and furnishes an excellent outlet for vehicular traffic to the north.

"Traffic to the north end of the yards is also routed in considerable volume by way of Race Street and Race Court, the latter of which passes under County road No. 83 and the Burlington right-of-way by means of a subway which eliminates the danger of railroad and highway accidents. Race Court also furnishes a means of connection with Franklin Street at the north tip of the yard, which is an outlet into the Adams County suburban and farming development. The Livestock Exchange Building area is reached, as heretofore stated, by means of a subway under the Burlington right-of-way from the intersection of 47th Avenue and Lafayette Street. It is also reached by means of a roadway in part on the Colorado & Southern and Union Pacific joint right-of-way, and in part upon the northwesterly side of the Burlington right-of-way. This latter roadway also connects with the road heretofore described as passing through the center of the main development.

"These streets and highways are of great advantage to the stockyard location in providing ingress and egress to the patrons of the yards whose livestock is moving by way of trucks and to all those having business in the yard area who travel by means of privately owned automobiles.

TOPOGRAPHY AND LAY OF THE LAND

**Topography
of land.**

"The main area of the Denver Union Stock Yard lands lies on a gradual slope from the Burlington right-of-way bordering it on the easterly side, falling off to the bank of the South Platte River, which

Trans.

borders the main area on the westerly side. The main portion of the cattle division, which is long and relatively narrow, is virtually level, the rise being most marked on the easterly side where the alleys slope up markedly to the chute pens and Burlington Railroad dock. I might state here that while I call that the Burlington Railroad dock it is the dock owned by the Stock Yard Company. I just referred to it as the Burlington Railroad dock for the purpose of identification. Somewhat lower lie the sheep and hog divisions which have, to a considerable extent, been placed on filled lands which formerly abutted the low bank of the South Platte River.

"South of Swift & Company the area has been recently filled in and marked here and there by minor depressions resulting from the settlement of the fill. The lowest portion of the main area lies north of Armour & Company's plant and in what was formerly an old bed of the South Platte River, which has been filled in part, but is not up to the grade of the general level of the yard area.

"Within the last few years, with the straightening Flood and widening of the South Platte River channel, protection. there has been constructed a levee or embankment of considerable extent which has been rip-rapped with loose stone to prevent the washing of the embankment. This improvement in the channel has been attended by filling portions of the yard area with the dredged material and in general offers adequate protection against the flood waters of the river. As the improvement has not been continued in to Adams County, there remains under the highway bridge crossing of Franklin Street and the railroad bridge of the Northwestern Terminal Railway Company a much smaller opening for the passage of water than that provided for by the newly im-

Trans.

proved channel. This might prove a serious handicap in the event of high flood waters, as the volume of water which could pass through the new channel would meet a severe restriction in the openings under these two bridges.

"I might say that since I came here I have been out at that location and find that the recent high waters of the South Platte have resulted in a washing out of a part of the highway bridge. The highway bridge has a wider opening than the Northwestern Terminal Railroad bridge but it was in front of the drift and I have an idea that with the restriction of water passing through the railroad bridge that it had to take the brunt of the force of the stream and that is what caused the washout on the highway bridge."

Q. Where is the highway bridge located that you first referred to?

A. That highway bridge is located on Franklin Street at the north tip of the yards just north of Race Court.

(Witness continuing). The lands lying north of Race Court rise quite markedly to the north and east and are highest in the gravel bank area at the northeast corner of the stockyard ownership. Lands lying west of the South Platte River are reasonably level, but lie some four or five feet below the river embankment, which borders it on the easterly boundary. Lands south of the Colorado & Southern in what will be referred to in this report as Zone 6, lie from three to twelve feet below the railroad embankments and are at present in the process of being filled in part by the City in its use of them as a dump.

"The lands in Zone 7, which lie south of 46th Avenue between the South Platte River and the

Trans.

Burlington right-of-way, occupy what in effect is a miniature bowl surrounded on two sides by the embankments of the river and railroad. Of the lands lying east of the Burlington right-of-way, those in what will be referred to as Zone 10 are an old gravel pit, virtually all cut up by excavation, the general level of which was originally at the grade of County highway No. 83 and Race Street.

"The horse and mule division in the area east of the Burlington right-of-way and north of 46th Avenue and the Colorado & Southern right-of-way lies topographically higher than the main body of the yards and at grade with 46th Avenue and Lafayette Street, the latter of which divides this division into two parts.

"From the preceding description it will be readily seen that all of these lands are accessible to easy drainage to the South Platte River, while at the same time offering no serious impediment to the movement of livestock and traffic because there are no pronounced grades in any of the roadways or alleyways.

BUILDING AND ZONING RESTRICTIONS

"The lands of The Denver Union Stock Yard Company lie within the areas zoned as "B" Industrial District. These are shown on the accompanying zoning map of the City of Denver, which is filed in the pamphlet containing the building zone ordinance with revisions in the latter to January 1, 1935. This zoning ordinance permits uses in the "B" Industrial District which are virtually unrestricted so long as there is no conflict with the general ordinances regulating nuisances.

Zoning
restrictions.

"On account of the prevailing winds in Denver, being from the west, the areas so zoned are wholly

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Stockyard is located on only available site.

on the extreme northerly boundary of the City and no other location of industrial area for a stockyards utility is available within the City limits. The area so zoned, however, is quite large, approximating a thousand acres, the largest portion of which, however, lies east of the main line of the Chicago, Burlington & Quincy Railroad and north of 48th Avenue. It would thus appear that the stockyards location, from a zoning ordinance standpoint, is so located as to be virtually the only location possible for such a utility. True it is that large vacant areas and sparsely settled areas east of the Burlington main line are so zoned, but these are not so located as to be developed for such a utility without considerable expenditure for drainage and other utility facilities.

"While it might be possible to have the zoning ordinance amended to expand the area of unrestricted industrial utility, it is reasonable to assume that such expansion would not be permitted materially south of the present southern limits of Zone "B" Industrial District.

SPECIAL ADAPTABILITY OF THE STOCKYARD SITE

"The development of the use of the lands of the stockyard company has been gradual throughout its entire history. Virtually the entire area has been developed from acreage property and by the expenditure of large sums of money for improvements of various kinds has reached a high state of efficiency and adaptability for its particular use.

"Confined as it is between the railroad and river embankments, with a cemetery development to the north, no material change in the present layout or departure from the present plan is in prospect. The present community of interest with the three large

ans.

packing plants and other inter-connected facilities for movement of stock from the yards, of course, provides a dominating element in making this site especially adaptable for a stockyard utility.

"These facts have been considered by the appraiser in the determination of his values for the various zones into which the property has been sub-divided for the purpose of this appraisal. It should not be overlooked, however, that for the purpose of comparing the values of this property with the sales of units comparable to the integral portions of which the yards are now comprised, it is necessary to take into consideration the lack of dedicated public streets and alleys to serve so large an area. In fact, the removal from direct access on the principal thoroughfares reflects itself in the zoning adopted by the appraiser. Moreover, many of the improvements which go to make the land valuable and desirable from an industrial standpoint have been valued separately by our engineers in setting up the cost of reproduction of the physical plant. This class of improvements is usually provided for by the municipality and paid for through the medium of special assessments against the properties which benefit from the improvements.

"An example of this is the cost of construction of the various roadways which are ordinarily reflected in a land value, but which in this case is set up in our engineering report. The same can be said of sewers which serve the drainage of the entire area. Consideration of these factors is an important modifying influence upon land value determination where the appraisal is made, as here, on the assumption that the improvements are stripped from the property and their value found separately and set up as an integral part of the physical structure valuation.

Lack of
dedicated
streets
detrimental.

Increased
value due
to highways
and sewers
not consid-
ered in land
appraisal

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ASSESSMENTS FOR TAXATION

"The assessments of real estate for taxation purposes in this portion of the City of Denver are no guide to the true values of the real estate insofar as actual worth is concerned. They are, however, of some worth in disclosing the relative values of different tracts and the relative values of different locations and street accesses. The lands are purported to be assessed as nearly as possible at the full value of the real estate, but a comparison of these assessments with sales of properties at similar dates discloses that the assessment will vary materially in either direction from the sales price.

"The conclusion has been reached, therefore, that the assessments are of little probative worth in the determination of actual values in this part of Denver. They have been considered by the appraiser solely for the purpose of relationship between different portions of the ownership of the stockyards lands. At the same time it is well to point out that in the various agreements between the Stock Yard Company and the railroads affecting the use of their respective lands, it is the practice to pro-rate taxes to be paid by the contracting parties on the basis of applying the local tax rate to a 50% valuation of the property.

SALES DATA

"Sales of land in the general vicinity of the stockyard properties have been compiled and are transmitted with this report as a part of the supporting data which were considered by the appraiser in arriving at his conclusions. In addition, as heretofore stated, sales of properties somewhat remote from the stockyard vicinity are included because they have been referred to in prior hearing and have been helpful to the appraiser in getting a broader

rans.

perspective of the general valuation situation in North Denver.

"This sales information covers lands of varying degree of similarity to the lands here under appraisal and will be referred to in the detailed statements covering the respective zones of value which have been established to break down the area by relative levels of value. As is to be expected from this character of data, the individual sale may suffer some degree of disability insofar as its direct application in the determination of value is concerned. However, these matters are given consideration when determining the weight to be given to the individual sale insofar as its worth as support is concerned. None of these sales constitutes an area as large in size as the assembled area of the Stock Yard Company. For this reason consideration has been given to the element of plottage and assembly of so large a tract in one holding for use by a single industry. At the same time the existence of abutting improved streets and special improvement assessed against the properties in the sales data have been considered in weighing the fact that a similar class of improvements is inventoried by our engineers in the cost of reproduction report.

"Leases to which the Stock Yard Company is a party are also attached as part of the supporting data. The lease covering the general use of railroad tracks has not been separately listed for the reason that it is the opinion of the appraiser that the entire railroad usage, including loading and unloading facilities, should be considered as a composite whole and at the making of this report no definite analysis is available on the allocation of the respective revenues and costs incident to the use of these facilities.

"I might add at this point that I don't believe that it would be possible from the accounts to allocate

Trans.

all of the costs and revenues against all of the properties that are used for railroad purposes and for loading and unloading purposes from the accounts due to the fact that certain expenses which I would consider as overhead expenses cannot be broken down in proportion to what they would probably apply in the handling of the loading and unloading of the stock.

BUSINESS DEPRESSION AND LAND VALUES

"The values placed by the appraiser are aimed to be fixed at a suitable level such as one should reasonably expect to exist over a period of about six months prior to the making of the appraisal.

"Such a period, however, should not be one of sub-normal business conditions and for this reason no attempt is made to predicate values upon evidences of distressed transferring of real estate. That depressed business conditions make for a depression in realty values is certain, but it is rarely possible to find sufficient transactions to establish definitely the extent of the recession. This is because realty values stagnate and much of the property which moves is handled to a large extent on a foreclosure basis. It is for this reason that there is a great scarcity of transfers of real estate similar in character to the stockyards property at the present time. Nevertheless while the stockyards and packing house industry has enjoyed a marked degree of stability in its business, it cannot help but be affected by the general business depression.

"In other parts of Denver the effect of the depression is much more striking and those people who were interviewed by the appraiser as to the relative levels of value, express opinions that the extent of the recession varies anywhere from 25 to 50 per cent below the level of values existing in 1929 and 1930.

Trans.

The endeavor to find a norm of value by the appraiser is evidenced by the consideration of a large amount of data antedating the business recession.

"In attempting to form a reasonable judgment as to the present level of values, general business statistics of Denver have been compiled and attached as a part of this report. Notwithstanding the assessments of real property in Denver have been successively marked down for the last three years until they average at least 25 per cent below those of 1929 and 1930, including the assessments of the stockyard property, the level of values established is not as low as might be contended for, based on these statistics. It is distinctly felt that the level of values is such as would prevail over a period of normal business conditions in this general vicinity.

SUMMARY OF VALUATION BY ZONES

"The lands of the Stock Yard Company were subdivided in a previous proceeding, before the Secretary of Agriculture, into eleven tracts. As these sub-divisions did not lend themselves to the value zoning deemed proper by the appraiser, they have been divided into ten zones in agreement with the management of the Stock Yard Company.

"These zones of value are outlined in the accompanying sales map and are identifiable by color and number. The areas of the respective zones have been agreed to by the stockyard engineers and the summary of value shows the application of the respective units to those zone areas as well as the total area and total value found for the entire stockyard land ownership."

(Witness continuing). On page 18 of my report Building follows the summary which appears in the forepart permits of the report. Following that are several photostats,

Trans.

the first of which is entitled "Denver Building Permits." One of the standard barometers of the real estate situation in the city is the number of building construction permits issued by the Building Department of the City, and I thought it pertinent to include these graphs which show the number and value of the building permits for the City of Denver from 1925 to 1934, inclusive. The graph was prepared by me from data obtained from the Denver Chamber of Commerce publication.

Bank clearings.

The next photostat shows the Denver bank clearings and the Denver postal receipts. These are also general business indicators for the City. The source 389 of the information is the Denver Chamber of Commerce publication.

Manufactures.

The third graph on manufacturing in Denver is included to show the business conditions, since that also has a material effect upon the demand for industrial property. It is true the industrial properties may not be identically similar to those that are used by the stockyard company, but the general level of industrial land values is pertinent in my opinion, and of course is affected by the amount and value of manufacturing. The source of the information is the United States Bi-annual Census of Manufacturers.

Species of livestock.

The next graph is a graph showing the total receipts of species of stock at the yards and a graph of all species, obtained from the 1934 annual report of the Stock Yard Company. The reason the variation on the species where the volume is small looks so pronounced is that I used logarithmic cross section paper, using a logarithmic scale, where the volume is small the percentage relationship shows up more markedly.

Trans.

390 Yes, I made the statement on page 13 of my report that it is necessary to take into consideration the lack of dedicated streets and alleys. I took that fact into consideration because in going on the concept that these lands are stripped of all improvements that are upon them naturally the roadways which we have inventoried in our engineering report are considered stripped off the property, so that the area becomes a very large area without any access shown. Stripped of these improvements that area has its access only through what one would call stub end streets, except as far as Race Court is concerned.

Lack of
streets.

Basis of
appraisal.

391 The purpose of the sales sheet, commencing on page 33 of my report, is to find out what the nearby lands are selling for and to make comparisons between those lands and integral parts of the lands of the Stock Yard Company as to their similarity, and also to give each one of these sales data some study as to whether it should receive any weight

392 in determining the value of the individual zone. The contiguity is not shown on the sales sheet but it is shown on the sales map which accompanies the report. On the sales map I have outlined in a red color the description of the specific areas covered in the sales sheet and used the same number as is used on the corresponding sales sheet. All sales data which follows on page 33 up to and inclusive of page 257 have a number on the sales sheet or a number

393 with a letter suffix. The sales after 257 are sales in which the Stock Yard Company itself was a party and are an endeavor to list as near as possible such sales to find out the original cost, so those sales carry a prefix of the letter A each time. Some of these sales are shown on the map, but not many, because a large number go back to early dates and have no probative value. They are listed because

Trans.

they were sales made to the Stock Yard Company and in an endeavor to study what the original cost of it was if such a thing were possible to determine.

Returning to my explanation of the use of the sales sheets, Government Exhibit 21, which is called in its title "The Land Appraisal Sales Map," has outlined in a red color the limits of the legal description of the lands covered in each of these transfers and has a number for each one of them. For example Sale No. 1 on page 33 of the report, the locations of the land described in that sale are shown in red at about the center of the map. There may be some little variation in the locations, but these red outlines give it substantially correct. On this sales map I show each sale except where there is a letter suffix such as Sale 1-A. In such cases they are part of or prior sales of the same land.

On certain sales sheets such as the one on page 160 of my report, under the caption remark I state "Agreement on sale analysis signed Barton of I. C. C., Gilmor of U. P., September 10, 1932." That is due to the manner in which I compiled a considerable portion of this supporting data, securing the ~~Washington transcript of the record in the prior~~ hearing and certain sales referred to therein. I also secured information from the Interstate Commerce Commission appraiser in Denver. I found that the same class of data as that which I was seeking had been an issue in valuation proceedings under the Interstate Commerce Commission between the railroads entering the City of Denver and the Commission's Bureau of Valuation and that the parties had reached agreement. Barton was the Appraiser then in Denver for the I. C. C. I verified the fact of agreement by interviewing Mr. Gilmor in Omaha.

Trans.

398 Yes, in my opinion the figures set out at the beginning of my report is my opinion of the value of the property.

Government Exhibit 23, being the land appraisal report, was offered and received in evidence. Govt. Ex. 23 received.

I was also directed by the Department to make an inventory and appraisal of the structural property of the Denver Union Stock Yard, which I have

399 done. Yes, I have assistants. The Department maintains a small organization of valuation engineers, with offices at Kansas City. Those engineers met me at Denver on January 7, and we commenced to work on January 8, 1935. Prior to that time I had instructed two of the engineers to proceed to Denver for the purpose of preparing a map or group of maps and assist Mr. Christensen in the preparation of such a breakdown on the map as Mr. Christensen would need for the purpose of properly describing his facilities. When we came in January we retained for a temporary period a group of young men to assist in the so-called manual labor phase

Method of structural appraisal.

Detailed inventory prepared.

400 of preparing the inventory. I assigned a portion of the inventory to be taken by each one of the engineers from our Kansas City office and my assistant, Mr. Galbreath, collected the price data and labor cost data. While here he interviewed some material men, building contractors, labor union officials and others to secure the necessary information for a proper pricing of the inventory. The men consulted with me every day, and I spent a part of each day at the yards. After the measurements had been concluded, the engineers were instructed to view the property for the purpose of stating a condition per cent of each of the major units, and each of the engineers in the Kansas City office made such an estimate. The data was assembled, completed and computations made at Kansas City. When all of these data had

Method of determining condition per cent.

Trans.

been compiled it was typed up in report form and the price extensions, quantities, and prices on labor and material are shown in a series of reports which we have prepared for introduction into this hearing. The engineers working with me were Mr. Galbreath,

401 Mr. Cushing, Mr. Johnson, Mr. McClintock, Mr. Schramm. Mr. Snider, while not an engineer, made certain calculations he was competent to make.

402 Then we had nine helpers.

403 We received hearty co-operation from the Stock Yard officials and their engineers in the furnishing 404 of considerable map information and other engineering data. The final result of my inventory and appraisal are my own results. I accept the responsibility 405 for the final figures in the appraisal and supervised the preparation of those facts and figures. The basis of the labor cost was the union wage scale in Denver considered in connection with the code and scale of fair wages.

I would not say that I attempted to locate the various sewers and water pipes and all underground construction personally myself, but I assigned one of our engineers to that purpose and where there was a particular situation that he thought should be called to my attention, he advised me and I would look at that myself. The Stock Yard Company furnished us 406 maps and sketches and other information of that type concerning the water line and sewers. My value was determined as of January 1, 1935.

Water and
sewer
facilities.

I have two blueprint maps which delineate the water and sewer facilities of the Stock Yard Company, one showing the facilities of the main yard area and the other those in the so-called horse and mule division. The latter is the smaller of the two maps.

Trans.

The map was marked for identification as Government Exhibit 24 and offered in evidence. Counsel for respondent stated that he had no objection if it were understood that respondent was not bound by Mr. Zelinski's statement concerning 50% ownership, etc. as appears on the blueprint. With that understanding the Exhibit was admitted.

Govt. Ex. 24
received
subject to
qualification.

409 (Witness continuing). The inscription "50 per
410 cent ownership" is the analysis of our engineer with
my approval based upon his interpretation of the con-
tract.

Objection was made that this was a conclusion of
law of the witness and with consent of Government
Counsel the notations appearing on Government Ex-
hibit 24 were physically deleted.

(Witness continuing). The next map is similar to
Exhibit 24 covering the main yard area of the Stock
Yard Company and shows the location of the respect-
ive sewer and water facilities, service lines, hydrants
and the like, based on information obtained from the
Stock Yard Company.

416 The witness stated in explanation of Government
Exhibit 24 and 25, that a certain sewer constructed
by the City through stockyards land did not appear
on Government Exhibit 24, but witness had obtained
information since coming to Denver that sewers were
constructed as part of the river improvement and
ownership thereof given to the yard company.

Counsel for respondent stated that this was in con-
nection with the exchange of properties due to the
establishment of the official channel and in lieu of
condemnation (see transcript pages 413 and 414).
As to Government Exhibit 25, witness stated that the
same main which he had designated as "50 per cent
ownership" in Government Exhibit 24 appeared on
Government Exhibit 25 and should be treated the

Trans.

Govt. Exhibits 24 & 25 withdrawn.

same way in the inventory. Government Exhibit 25 was offered in evidence. Respondent's Counsel stated that Exhibits 24 and 25 were not complete, and did not show all of the water mains. Exhibits 24 and 25 were withdrawn.

419 The pipe which I designated as 50% ownership was set up that way in the original inventory in 1929 and 1930. The instrument concerning it is listed in Mr. Christensen's exhibit as well as in the auditor's statement. As to the 16 inch main, I discussed it with officials of the Stock Yard Company and there is some question as to whether that main had not also been settled during the past hearing. It had not been
420 included in the inventory by either engineer. The Stock Yard engineer stated that he had made repairs to the pipe, but on checking with the City department, they claimed ownership and said they would repair the pipe. Yes, that concluded my investigation as to the water.

As to the changes in the sewer system, we are compiling a statement of changes and the suggestions of
421 the Stock Yard engineer. In addition we have prepared a separate statement on the so-called out-fall sewer which serves Swift & Company and the Stock Yard Company jointly. It was constructed as a part of the consideration on the part of the City when the river improvement was being performed, and the sewer was a necessary piece of construction to take care of existing sewers of both the Stock Yard Company and Swift & Company. On the basis of the proportionate diameter of the pipe of the sewer of the Stock Yard Company which empties into the out-fall sewer, I think that about 33% of the cost of this sewer should be allocated to The Denver Union Stock Yard Company. Yes there are certain minor changes necessary in my inventory and appraisal as of the values and those will be submitted in the form of

Trans.

422 these tabular statements. The first is in connection with the out-fall sewer.

423 The tabulation was marked Government Exhibit 26.

(Witness continuing). The figures shown on Government Exhibit 26 are in addition to my cost of reproduction new and to the cost of reproduction new less depreciation.

Government Exhibit 26 was offered and received in Govt. Exhibit 26 received evidence.

424 (Witness continuing). My next exhibit is entitled "Additions to Sewer and Water System", which was prepared under my direction. It shows the detail of the changes which would result in the cost of reproduction new of the sewer incident to making changes in both directions. It shows that there would be a total net addition to cost of reproduction new less depreciation of \$721.00 and of cost of reproduction new of \$1,000.

Government Exhibit 27 was offered and received Govt. Ex. 27 in evidence, the witness stating that the addition did received not include the addition which appears in Government Exhibit 26.

426 (Witness continuing). I have prepared a report on the value of the stockyards structural property in three Volumes. They were prepared under my direction. The first volume is a general summary and a detailed summary as to large units of property, showing the cost of reproduction new and the cost of reproduction less depreciation of the physical plant of the Denver Stock Yard Company. The second tabulation is a computation showing what the so-called straight line depreciation would be if derived from the mortality tables of each of the structures that are listed in the report. The numbers such as 8-13 and

Trans.

Y-9 are the designations that were given to the buildings or structures in Government Exhibit 8. The first column headed with the letter A is our cost of reproduction new for the specific unit of property. Column B is the estimated life in years based upon mortality tables published in various engineering books, periodicals and also, of course, based upon my own experience. It expresses my judgment as to what the normal expectancy of life of that particular

428 structure would be under ordinary maintenance conditions. The third column headed with the Capital letter C is the annual rate of straight line depreciation which would follow from the use of the service life used in column B, and column D is the mathematical computation arrived at by the application of the percentage in column C to the total money in column A.

429 I assume a construction period of one year and my reproduction cost new is \$3,015,222, subject to the corrections in Exhibits 26 and 27. No, this figure

430 does not include land, but I have included interest during construction on the structural property but not interests during construction on land. I would recommend that 7% on the land value figure for the period of one year be added in connection with the determination of the final valuation of the property.

431 In this volume I have shown the amount of the cost of reproduction less depreciation on the first nine pages of the exhibit. My figure on the cost of reproduction new less depreciation is \$2,428,600, not including the corrections on Government Exhibits 26 and 27. Wherever I speak of reproduction new less depreciation, these figures should be corrected to the extent disclosed in Exhibits 26 and 27. No I cannot say what, in my opinion, is the final value of the

Trans.

property because there are items that may or may not be included.

Government Exhibit 28, being Volume I of the Govt. Exhibit Land Appraiser's report, was offered and received 28 received. in evidence.

Volume 2, Government Exhibit 29, is a tabulation of the details set out disclosing how the figures in the summary have been built up for a portion of the units appearing in the detailed summary. Volumes 2 and 3 together give the complete details for all of the separate units and disclose how the quantities of material and labor have been apportioned. It was prepared under my direction.

433 Government Exhibit 29, being the volume just described, and entitled "Office Building, General Buildings, Cattle Division, Viaducts and Subway, Hog Division", was offered and received in evidence. Govt. Exhibit 29 received.

Government Exhibit 30, being Volume 3 of the Govt. Exhibit report was offered and received in evidence. Govt. Exhibit 30 received.

A fourth volume, which is not numbered but which is designated for identification as Government Exhibit 31, is entitled "Supplemental Appraisal" and contains the items of labor in "company work" reapportioned at the scale of wages paid by the Stock Company Yard Company during 1934, and is therefore a restatement of the summary and the detail of pricing on certain portions of the construction which I feel would be performed by Company forces during the time that the main body of the plant was being constructed by the contractor. It shows the effect of using company labor in part of the construction program on the cost of reproduction less depreciation and on the cost of reproduction new. This, of course, covers only a minor portion of the construction in the plant. It changes the cost of reproduction now from \$3,025,222 to \$2,977,150, and

Trans.

the cost of reproduction new less depreciation from \$2,428,600 to \$2,398,931.

MR. MILES: The Government now offers as Exhibit 31 the volume referred to as Government Exhibit 31 for identification.

MR. BOSWORTH: We object, Mr. Examiner, upon several grounds, perhaps all of which go to the materiality of this exhibit for the reason that the company is not able on any construction basis to employ its own laborers. We have four carpenters who are non-union men and under the rules of this locality that precludes their working while any union men are working on the property and that is very strictly enforced here. We feel that the exhibit, therefore, not taking into account those facts, is prejudicial and does not reflect the true condition and for that reason it is immaterial and incompetent.

Govt. Ex. 31
received over
objection of
respondent.

MR. MILES: No argument. Renew the offer.

THE EXAMINER: Objection overruled and Government Exhibit 31 will be received.

(Whereupon *Government Exhibit No. 31* was received in evidence).

Condition
Percent.

436 (Witness continuing). The cost of reproduction new less depreciation appears in all three volumes, but I have compiled an additional volume entitled "Condition Percent January 1, 1935" showing the percentages adopted on each of the units of property listed in the summary. It shows in addition to the percentage adopted by me, the condition per cent as found by each of the engineers who worked under me. The first page is illustrative. The designation U-1 preceding the new Exchange Building ties up with Government Exhibit 8. The letters C, G, J and so forth, appearing at the head of the column, are

Trans.

438 the initials of those engineers. In determining the weighted average double weight was given to the estimate of the engineer who actually inventoried that particular structure or unit, and the totals derived are therefore divided by six. The figures of the various engineers were submitted to me, we discussed
439 them in Kansas City and then I adopted a condition per cent and my conclusion was based upon those figures plus actual inspection. My percentage was adopted after discussion with the engineers.

The tabulation was marked Government Exhibit **Govt. Exhibit 32** received.
32 and was offered and received in evidence.

MR. MILES: (Continuing). Mr. Zelinski, in valuing the stockyard property did you reach your conclusion based upon material in place, also on a property that is able and willing to function as a stockyard and as a business earning an income?

A. I did.

441 (Witness continuing). The compilation entitled "Areas of Services and Facilities" is a compilation of the area of each tract of land designated by Mr. Christensen.

The said tabulation was marked for identification **Govt. Ex. 33** received for certain purposes.
as Government Exhibit 33 and was offered and received in evidence upon the understanding that it only referred to areas and had no bearing upon the classification of facilities and services.

442 (Witness continuing). I have a volume entitled "Wholesale Price Comparisons", being a series of graphs showing certain wholesale commodities and their index number based upon 1926 as 100. The purpose is to show in general the position which the current time of the report occupies in the general price structure of the country.

Trans.

**Govt. Ex. 34
received.**

The volume was marked Exhibit 34 and was offered and received in evidence over the objection of respondent as to its materiality.

**Govt. Ex. 35
received.**

442 A volume entitled "Construction Cost Curve, Engineering News Record," containing a tabulation and graph showing the general construction costs as compiled by the Engineering News Record and their relative levels over a period of years was marked for identification as Exhibit 35, was identified by the witness and was offered and received in evidence over the objection of respondent as to materiality.

**Govt. Ex. 36
received.**

443 A volume entitled "Current Building and Construction Wage Rate Per Hour Yearly Averages, Engineering News Record" being a tabulation and graph showing yearly averages of wages for skilled and common labor, compiled by the Engineering News, was offered and received in evidence over the objection of respondent as to its materiality.

445

Cross Examination:

**Elements of
land value.**

Considering the land first, the elements of value which I considered were the proximity of the land to highways, railroads, its freedom from floods, its topography, the availability of fire protection, easy access to the availability of water and other city advantages, such as electricity, car lines, labor supply, schools, churches, proper housing for labor, recreation grounds, and so forth, the nearness of the property to general industrial centers of the city and the location of the land with regard to the particular related industries. Yes, the lay of the land from the standpoint of drainage and the availability of the ready disposal of sewerage are important elements in the value of land. Yes, I felt that the zoning ordinance in Denver has a decided effect upon this property. All these ele-

Trans.

448 ments apply in varying degrees to this property. You find more of the elements, if not all of them, to a greater degree in a larger assembled tract than you would in any one isolated tract.

Where I spoke of the absence of highways in Lack of the tract, I meant an absence of dedicated public streets.

streets. The absence of dedicated streets under certain circumstances can be an advantage in connection with the tract for a large industry but is not always so. You must remember in this case I am valuing this property not for the special use and in the special way that the Stock Yard Company is using it, but I am considering its availability for a stockyards use and stripped of these improvements I am trying to visualize the effect of the lack of direct access to a large portion of this area, which I think should be considered in

Not valued for
stockyard use

449 the valuation. Compared with a steel mill industry this is not a large area and of course the character of the industrial use, where the areas are large, is quite a determining factor in the value. The larger the areas the less the unit prices of those areas. The same thing is true with regard to oil refineries. It is for that reason that that class of industrial development is usually located on lands that are relatively lower level of value. The same thing would apply to a railroad yard. Yes, the streets. stockyard tract has just as good general access from the outside areas, but trying to visualize this property as it actually is on the ground, I think some zones might have higher values if they had dedicated

450 streets in and through them. Yes, in my judgment

Highest and
best use is
stockyard.

the highest and best use for this particular area as a whole is a stockyards use. In assuming that the land is vacant and stripped of improvements, I do not mean that it is raw land. I mean that I am

452 stripping the land itself of all of these engineering

Trans.

Highest and
best use.

Never
assembled a
large tract.

Power of emi-
nent domain.

improvements that are necessary to put it to the actual use that is being made of it and that those improvements are not present. I am considering, of course, that the general utility improvements like city water are at hand and available, electricity and the availability of drainage, that sewers would have to be constructed, but that the improvements themselves are not on land, so that strictly speaking I would not say that you considered it raw land because I consider it land ready for development as a stockyard location. Yes, I also thought of it as a location for any large industry, except, that in my opinion, a stockyards utility of this property would be the highest and best utility. Yes, I added an assemblage value, but I could not say the exact extent to which I added it. It is one of those intangible things that I cannot define on a percentage basis. All I can say is that my value is higher because of its availability for stockyards use and because of its being an assembled tract than it would have been had these tracts been in separate ownerships. No, I have never assembled a large tract of land, but I have considerable knowledge concerning assemblage because a considerable portion of my time with the Interstate Commerce Commission was devoted to a study of what is called the excess cost 453 of acquisition of railroad lands. In that study I compared the cost of railroad lands against the sales of property in the vicinity for individual acquisition.

Yes, the railroads have the power of eminent domain, but so far as I know the Stock Yard Company does not have that power. This does not affect my judgment of assemblage value materially for the reason that although the railroad theoretically cannot be bilked in the acquisition of their properties because theoretically the courts would see to it that any award made in a condemnation proceeding was

Trans.

a fair award, yet as a practical fact a railroad is up against the same proposition as any other large industry in acquiring its land and for that reason attempts to negotiate to a large extent rather than 454 condemn. Yes, until the Omaha valuation case most of my work has been with railroads.

Until this occasion I have never had any occasion to appraise any land in Denver. The total time I spent in Denver on both the appraisal and structural property and the land was approximately thirty days, and about half of that time was on 455 land and half on structures. I checked the sales shown on Government Exhibit 21 with the records as to the existence of these actual transfers, where I did not have the legal book and page records. I made a preliminary study from other sources of information in order to take advantage of prior investigations and I have some familiarity with the Denver 456 railroad appraisal situation. In some instances I interviewed grantors or grantees or their agents. I interviewed Mr. McDougal of the Brannan Sand & Gravel Company about the transfers he had for that business. I interviewed Mr. Blayne regarding some of the transfers of his company, and certain others. I talked with others over the telephone. The information appears on the sales sheet. The Union Pacific sales, as appearing in the sales sheet, show this information, which I verified by conference in Omaha. The analysis I make of the property is the determination of the actual consideration paid, whether there were any improvements on the property that might have to be deducted to determine the naked land value and the acreage and then the unit price which one would get from that information. 458 Yes, these sales are within the Union Pacific industrial district, and it is the general view that such sales are not a fair index of values for the reason that the railroad in making such a develop-

Never before
appraised
land in
Denver.
Time spent
on appraisal.

Trans.

ment is seeking to tie traffic to its rails. I discussed that very feature with the officials of the railroad in Omaha. I happened to know that the Union Pacific had got into trouble one time because it was thought that the railroad was doing this very thing and indirectly rebating to shippers by selling them land at less than its market value. I was assured in this instance that instructions from New York required that they get every fair penny of value. I am only familiar with the restrictions the railroad places upon this property in a general way. I, of course, know they are attempting to tie traffic to their railroad and doubt if anyone to whom the railroad is selling or leasing property can get a connection from any other railroad. Yes, I think in general the railroads require connection with and shipment over its rails and this condition might have a depressing effect upon the price, but in Denver, with a high-class carrier like the Union Pacific, and the switching arrangements, I think the shipper 459 might be as well off on the Union Pacific as anywhere else. Yes, I understand that where the lines are not competitive the switching charges are not 460 absorbed. Yes, probably portions of the Rio Grande are not considered competitive with the Union Pacific. I am not familiar in detail with the territory served by both lines.

Yes, it is certainly true that land which is serviced by several railroads is generally more valuable 461 than land serviced by one railroad. Yes, I would consider a tract of land having practical terminal facilities as of more value than a tract of land without such facilities. Yes, the stockyard land has what is tantamount to terminal facilities. Yes, even when the stockyards tracks are stripped off the land, my land appraisal shows the stockyards area is touched by the Colorado & Southern, the Union

Tract having
facilities of
a terminal is
more
valuable.

Trans.

Pacific, the Burlington, and the Northwestern Terminal and the Santa Fe has arrangements with the Union Pacific and Colorado & Southern. Yes, all of the trunk line roads reach the yards. Yes, I consid-

462 ered that this tract of land has in effect terminal facilities, and that this area had advantages that a piece of property located on an individual railroad would not have. I could not state the percentage of additional value, but it had a fair amount of weight.

Stockyards
tract has in
effect termi-
nal facilities.

Yes, the fact that this area is well above the high-
463 water mark is an element of value. Given the same availability for the same kind of uses a low-lying tract subject to overflow would not be as valuable as the higher lying land.

Land above
the overflow
is more
valuable.

Yes, in comparing low-lying land to higher land and valuing it, the cost of filling to make it com-
465 parable must be considered provided that the ex-
pense would be economically justifiable. In the Pere Marquette valuation case, where I appeared for the railroad, where certain land valued by the Government at 15c a square foot was worth 40c a
463 square foot, I testified that the sales which the Government was putting forward as comparative sales were inferior to lands in any portion of the zone on account of the large percentage of low-lying lands and its deficiencies in accessibility. If I re-
member correctly it was waterfront property on the lake, and if you put in a bulkhead you would have
464 to expend considerable money for filling, and for that reason I was making a comparison of the two properties on the basis of the topography and the necessity of measuring the lands that were more similar to the right-of-way. I don't know whether it was the filling alone that was worth the differ-
465 ence between 15c and 40c. It might have been the availability for the particular kind of use, and that in my judgment made me think that if that land

500

120

Trans.

was filled it would have brought that much more money. Not having the map before me I could not discuss the specific location.

Valuation of
Zone 3.

Yes, I valued Zone 3 north of Race Court at \$3,500 an acre. Yes, I took into account its accessibility and rail connections other than the stock-
466 yards track that is on it. Zone 3 is accessible directly on Race Court, a public thoroughfare, and I think it would be feasible to get trackage to it either from the Burlington or from the Northwestern Terminal. Yes, if Race Court were closed I think it would affect my value of Zone 3. I don't know that a dedicated highway along the north end on the County line would give it equal accessibility. Yes, if that were done the tract would be more available for what I would call uninterrupted use as against having the public thoroughfare to cross at the present time in stockyards operation.

467 I think I have some maps which show that the west portion of Zone 3 was under water during the high water period. No, I am not referring only to that part which is actually in the river bed. I couldn't state how far back this high water was, whether within ten years or not, but it is my recollection that some photostatic maps somewhere in my possession showed that a portion of this Zone 3 was under water. No, I am not referring to the
469 Local Beef and Mutton tract.

Local Beef
and Mutton
Co. sales.

The sale to the Local Beef & Mutton Company, are sales No. 125 and 126, on pages 255 and 256 of my appraisal. They occurred in 1922 and 1920 respectively at \$3,000.00 per acre. I took that from Mr.

470 Simonson's report in the 1930 hearing. The Local Beef & Mutton land is subject to overflow, in fact I understand that during the recent flood they were under water. I wouldn't be surprised if that land is about 8 feet lower in elevation than any portion

Trans.

of Zone 3. The land was purchased in 1922 and Zone 3. 1920 at \$3,000 per acre and is subject to flood, but I would not say that \$500 per acre is my estimate of the difference in the lay of the land with regard to that element.

These sales are only a part of the data I studied in arriving at my conclusion that Zone 3 should be valued at \$3,500 per acre. I considered the actual purchase of the tract by the Stock Yard Company 471 itself for \$3,000 per acre. I couldn't state the effect it would have on my opinion of purchasing a less valuable tract of land in 1920 and 1922 for the same purchase price. The purchase of two small tracts of land where an industry is to commence often causes the unit price to be materially higher, whereas the purchase of the tract by the Stock Yard Company of a larger area and one that the sellers were well aware would fit in with the plans for expansion then they could afford to dicker on a real, fair value of the land at that time. Yes, I understood that the Stock Yard Company had an option on the land prior to purchase and that there were other parties ready and willing to take part of the tract at a higher price if the yard company 472 did not exercise its option. I can't say that that means that the Stock Yard Company got a bargain. A good deal of the land purchased at that time lies in Zone 2, on which I placed a value of \$5,000 per acre. As to the Local Beef & Mutton tract, in my judgment I would say that the property wasn't worth what was paid for it. I couldn't say specifically what value I would put on it, but the \$3,000, looking at it from this date, would look to me to be more than it was worth. No, I did not make any investigation as to the value of land below the Local Beef & Mutton on the same side of the river, because it was getting more and more remote from the

Local Beef
& Mutton
Co. land.

Trans.

stockyards location. No, in point of distance it is not as remote as some of the sales I have listed, but it is in point of getting away from the developed sections and from higher levels of value. No, I don't know of any lands in the territory down the river from the Local Beef & Mutton that may be purchased at less than \$3,000 per acre.

- 473 When I thought that if Race Court were closed it would, in my opinion, be deducted from the value of Zone 3, I was assuming that no other means of access would be provided. I could not say how much it would deduct, but I would say that it would be a material reduction.

**Valuation of
Zone 4.**

- Yes, I valued Zone 4 at \$2,500 an acre. I think I state my reasons in a general way on pages 24 and 25 of my report. Yes, on page 25 I speak of the relative location of these lands with their possibility 474 for industrial development, and by relative location I mean relative to the rest of the development of the stockyards property and the neighborhood industries which are related to it and its relations to, topographically, the river. I would say that that property (Zone 4) is now free from flood danger. Yes, it has had two pretty good floods in 1933 and 1935. So far as I have learned no part of the stockyard property, Zones 3 and 4, have been inundated 476 during the recent floods. Yes, I state in my report that the entire area is substantially well filled. I don't think Zone 4 fits as well in integrally with the stockyards area as some of the other zones. Yes, railroad trackage is on that land and hay barn and material yard. Yes, it is used a great deal for hay storage and trucks and wagons get in there over driveways on that road, reaching the freight cars back of the sheep barns. Yes, it can be used for fire protection as it forms an access around the yards. Several sewers go through the tract. I can't say

**Fire
protection.**

Trans.

as to the exact location of power lines, but I know they at least abut the zone. Yes, it brings the stockyards property out to the river so that except for the easement to the City, the Stock Yard Company owns the whole tract next to the river except the old Coffin Packing Company site.

478 Yes, it is my understanding that the Stock Yard Company can make whatever use they need to of the property (the river bank) provided it is open for the City to go in and repair and maintain the embankment, and to that end the well established roadway is an advantage and would be particularly so if it were a public thoroughfare. Yes, as a private thoroughfare it provides a means of ingress and

479 egress to the bank. Yes, it is a valuable tract for your use. On the average I would say that it is higher

Zone 4 is a
valuable tract.

480 than the old Coffin Packing Company site. In Zone 4 there is relatively a very small part where there is any marked decline from the top of the bank to the actual ground level. I think the Coffin Packing Plant was in the area that in times prior to the building up of the embankment was under water.

480 I don't know that I would agree that Zone 4 is more valuable land than the Local Beef & Mutton land. The latter has certain elements directly affecting it which all of Zone 4 does not have, namely the direct trackage at the Local Beef & Mutton Plant to the Northwestern Terminal Railway. And on the westerly end the land is available directly for the construction of buildings, while on Zone 4, or particularly those portions which have recently been filled, I think heavy construction would be neces-

481 sary. Yes, the Northwestern Terminal can get on to Track 4 by means of a connecting track, and I understand that it has mutual running rights with the Burlington. No, the Local Beef & Mutton is not a paved road. It is a dirt road from the North-

Trans.

western Terminal right-of-way, with some surfacing on it, but I would not call it an improved road. Yes, I understand that both the Northwestern Terminal track and this road are subject to flood and are frequently under water when high water occurs. Viewing the entire Stockyards tract I am frank to say that the access to it is far superior to that of the Local Beef & Mutton tract.

Zone 1 is
key zone.

Valuation of
Zone 5.

485 In discussing other zones I state in my report that on a relative basis a comparison with Zone 1, etc., I fixed the value of Zone 1 as the key zone, so to speak. More of my study and my attempt to reach a conclusion on value was centered around Zone 1, in the first instance, than any of the other zones because, in my own mind, I had reached the conclusion that there would be a step down in values 486 insofar as the other zones were concerned. I wouldn't say that I disregarded any of the sales in that scaling down process. It was a matter of considering the sales data as being applicable to all of the zones more or less and then scaling down from Zone 1 in my own mind about the relative amount that I thought it exceeded in value these other zones. I did not disregard the Averich sales and the Local Beef & Mutton sales. I considered them confirmatory of my judgment as to what the value was.

The Averich sales are on pages 245 and 246, the first one is for 1.13 acres and a unit price of \$2,761 per acre, and the second is a sale of 2 acres at \$3,000 per acre, on September 1, 1927. Yes, I valued your tract 5 at \$2,000 an acre.

Q. Well, how can you say, Mr. Zelinski, that the Averich sale confirmed your opinion of value as to tract 5?

A. Well, because I was considering other factors as well as the actual sales themselves.

Trans.

Q. Well, what other factors?

A. Well, in a case like Zone 5, I would consider that that particular property suffered more from the effects of the depression than the main body of the yards.

Q. Well, now, as compared to the Averich tract, our Zone 5 is certainly comparable, isn't it?

A. Yes, sir.

Q. As a matter of fact, it is now well protected from flood by the river embankment, is it not?

A. It is.

Q. Has access to an improved, graded, paved, curbed and guttered road on the west, Washington Street?

A. Yes, sir.

Q. There is no railroad into the Averich tract nor into Zone 5, is there?

A. There is none.

489 (Witness continuing). I consider the accessibility of the Averich tract superior to the accessibility of Zone 4, because it runs directly on Washington Avenue, whereas Zone 4 does not have any direct frontage on a dedicated public highway. At least one of the parcels in the Averich sale faces on Washington Street; it is the parcel named in sale

490 No. 118.

(Witness was handed a map).

I would say that it had about 10 feet frontage on Washington Street, sufficient for one-way truck travel.

Trans.

- 492 The Ruedy Products Company sale to the City of Denver is on Page 247 of my report. Yes, the recorded consideration on that sale is \$12,814. I would say that I probably looked at this sale in the records of the courthouse as well as others. Yes, I state that my authority for the value of the improvements is the transcript and exhibits of the 1930 hearing, and I give Simonson's analysis of the land value at \$1,773 per acre on an acreage of .846 acres.
- 493 I don't recall the details as to how Simonson reached that value. I have on the following page the analysis by the Stockyards appraiser, showing \$3,545 per acre. I didn't use that transfer in the sense that I gave it any weight at all. My reasons were that the land was in the bed of the river and also involved the moving of the plant and other considerations. The City was armed with the power of eminent domain and I am not presuming that the City paid more than a fair value for that piece of land. What I do presume is that because of its being tied into so much plant, it would be almost next to impossible to get any real analysis out of the sale
- 494 that would reflect a land value. Yes, I know that the City did condemn land in connection with the change of the Platte River channel wherever the City felt that the price was not fair. Yes the analysis by the Stockyards appraisers show that the City agreed that the cost of wrecking and reducing the plant was approximately \$9,800, which would leave a little bit more than \$3,000 per acre for the land.
- 495 That tract has no accessibility to Washington Street, so it is lacking in the element of general utility. Yes, the Capitol Packing Plant is lacking in both elements of general utility except for the narrow tongue of land running up to the highway. Yes, since these valuations were put on these particular properties (by the appraisers in the 1930 hearing) the flood menace has been removed by the improve-

rans.

ment of the channel. Yes, that improvement would augment the value, other things being equal.

496

Q. Do you consider from the standpoint of a rate hearing that the effect which we trust is purely temporarily of economic conditions should influence the value of the land appraisal?

A. I think it should to a limited extent. I myself follow the general plan of not letting it influence me too much. I seek to get what I think would be the fair, normal level of value as of the time at which I am making the appraisal. In other words, to give the depressed conditions full effect, one could urge the very lack of markets as being so depressing an influence on land that when land does move, it virtually has to move on a foreclosure basis, and I, of course, don't believe that that is any fair measure of value. What I am trying to find as a level of value is one that I think would be disclosed by normal movement of sales at the present time if we could get a normal movement.

Yes, I would say that Zone 5 has much greater general utility value. It is available for residential utility, by sub-dividing or for the use of any industry that needed that sized tract (12 acres). I do not know the exact amount of money which has been added to the tract since the 1930 hearing by way of curbing, grading and otherwise but it is my understanding that the street has been improved into its present condition since the prior hearing. My difference in the unit value, namely \$2,000 per acre, from that of the Government appraiser in the 1930 hearing of \$3,000 per acre on this tract, is not due to economic conditions,—I simply differ with the former Government appraiser.

01

General utility of Zone 5.

Trans.

My report at page 242 gives the consideration for the K. & B. tract as \$3,649 per acre gross and \$3,237 per acre net. The net figure is on the 502 assumption that you deduct \$3,000 for improvements, that is, for the old bridge. I got that figure of \$3,000, I think, from the transcript of the former hearing. It may have been from Mr. Simonson's report. I made no inquiry as to the condition or value of the bridge at that time. Yes, that tract is considerably removed from the main stockyards 503 area unless by bridge. There is no bridge connecting it now. No, it does not connect with 46th Avenue but fronts on 48th Avenue which is not improved, just a dirt road. It does not front on Washington Street.

Yes, practically all of Blocks 3 and 4 is in the bed of the river. No, I do not know the price that was paid by the City in condemnation of those two parcels.

Q. What I am interested in, Mr. Zelinski, on this particular Zone 5 right now, is the fact that to the north of the tract there are numerous sales at say \$3,000 or approximately \$3,000, and there is this sale of K. & B. tract at \$3,000 or \$3,600, depending upon the value of improvements or lack of improvements, and determining how, in the face of these comparative sales, you reached a value of \$2,000 on Zone 5.

A. Well, I think that I explained as far as Zone 5 was concerned and that was one zone where, in my judgment, the effect of the depression would have been to establish a more or less permanent lower level of value.

505 (Witness continuing). I cannot give any indication of the extent to which the depression has so operated, in point of percentages or in point of dol-

Trans.

lars. The figures would indicate a 33-1/3% decrease, but I could not say that the depression has had that effect because I don't know whether I would have put as much value on the land as Mr. Simonson did, had I made the appraisal in 1929 and 1930.

I can't tell you the amount of weights which these adjoining sales have in my mind in reaching my conclusions. They are evidences of value to me of those particular tracts that were transferred, but they are not necessarily controlling as to what my judgment would be on the value had I made the appraisal, we will say, at about the date of the sale. Yes, the price at which the particular parcels were actually sold is the best index of actual values, other things being equal. I agree that none of those parcels has any greater accessibility than Zone 5, nor any greater utility value, general utility value. Yes, I state that they have less general utility value.

511 I think one of the reasons I gave a higher valuation to Zone 7 than to Zone 4 was because it was located on 46th Avenue and was alongside the Burlington. Yes, Zone 7 is the tract south of 46th Avenue. It is reasonably well filled. No, I don't believe the Pitkin sale in 1888, shown on page 269 of my appraisal, affected my views in regard to Zone 7.

Valuation of
Zone 7.
The Pitkin
sale.

I describe it as having 12 acres with an actual consideration of \$52,500, followed by the statement that it is unallocable. The deeds showed that there were improvements on the property and there was no way of determining what, if anything, was the value of them. I listed this sale solely as one of the historical sales in the acquisition of the stockyards land. It received no weight with me as an indicator of value whatsoever. I don't know whether it took in the present Zone 7, Zone 6 and Zone 8. I don't recall the limits of it because I didn't use it as an

Trans.

indicator of values. Yes, the City has grown since 1888, but I did not take it as an indicator of value because there was no way for me to break down the 513 value of the improvements. No, I did not attempt to find out the value of these improvements; I made no inquiry whatsoever. Even if, by reasonable testimony, it could be established that the value of the improvements was such as to leave a value in 1888 of around \$4,300 or \$4,500 per acre, excluding the improvements, that would not be any index of present value because it would be too remote. I draw the line between the sales 15 years ago, in 1920, and ones 50 years ago, in 1880, because 15 year ago I was already doing considerable valuation and land appraisal work and have been more or less familiar with real estate markets as of that 514 time. Special conditions which may have surrounded a sale 50 years ago I can't determine. Yes, this is true even though a community has been constantly on the upgrade. Sometimes properties have gone down even though the community has gone up, and that sometimes happens even in an industrial district. I couldn't say whether that has actually happened with regard to this particular property. No, I am not aware that industrial properties have gone up rapidly in Denver within the last two years, so far as my inquiries disclose.

Burkhardt
offer.

Valuation of
Zone 6:

The Burkhardt offer of \$10,000 an acre for acreage in Zone 6 did not affect my viewpoint with regard to the value of that tract because the divergence was too wide from the value the Western States Packing Company carried its property adjoining on its books.

516. I refer to that conversation on page 235. No, I don't know what the Burkhardt Packing & Provision Company showed for the value of the land at the time of sale. Yes, I know the vendee of land can

rans.

and frequently does allocate the purchase price as he sees fit. I placed the value on Zone 8 on the basis of its availability for general utility. It is a very small acreage, approximately three-fourths of an acre or about eight city lots, bounded on one side by the Colorado & Southern right-of-way, on 518 the west side by the Colorado & Eastern right-of-way, on which there is no trackage, and on the south by 46th Avenue. Truckers use it for cleaning their trucks. From the standpoint of stockyard use it is just an isolated parcel. Therefore I feel the best measure is from some alternate utility.

Yes, I stated earlier that the center of activity is in Zone 1 around the area of the Exchange Building. My observation was that the flow of traffic in the vicinity of the Exchange Building was quite 519 large. I have treated the subway as a dedicated street, a public thoroughfare. Not from the standpoint of the trading activity in the stockyards, which is out in the yard, but from the standpoint of the flow of pedestrian traffic and general activity, I would consider that the Exchange Building area was 520 the center of activity. In other words I consider there are two types of activity at the yards, the marketing activity of course is more active out in the pen areas but there are miscellaneous activities and miscellaneous demands for the traffic of people to and from the yards into the Exchange Building area. Well, from the standpoint of marketing activity, I think that is a fair statement. I am, of course, not a very good judge of the real market activities, so to speak, I know that the activity is greatest around the section where stock is being weighed, wherever there is a scale location there is a pronounced activity, and, of course, the Blayne-Murphy viaduct so-called passes over the vicinity of a large marketing activity of that kind. Yes,

Valuation of
Zone 8.Valuation of
Zone 1.

Trans.

physically both Zones 4 and 2 are within easy reach of that center of marketing activity.

Valuation of Zone 9.

As to Zone 9, I would state that general utility 521 had a more powerful influence on me than the stockyard activity alone. I felt that Zone 9 was one piece of property owned by the Stockyard which might be very well devoted to an alternate business utility semi-retail and small commercial. That, of course, goes only for the street frontages. Yes, in reaching my conclusion on that property the sales of adjoining lands affected my decision to a considerable extent.

Murphy barn.

522 (It was suggested to the witness that his sale on page 78 of the so-called Murphy barn for a consideration of \$22,000 should be \$16,000 for land and \$6,000 for improvements, and that he had reversed the figures, and that this was shown by Mr. Simonson's appraisal in 1930 as well as by the stockyards appraisal then and now).

(Witness continuing). I couldn't state as to that but my recollection is that there was an analysis with the figures reversed, but I think the Simonson breakdown was on the basis of \$6,000 for land and \$16,000 for improvements. Yes, I have inspected the barn and at the present time it is not a very well constructed building,—it is more of a shed, with a brick front but the rest is frame with a galvanized iron roof. I don't know the exact dimensions. Yes, 524 I will look up Mr. Simonson's report. No, I made no inquiry either from Mr. Murphy or Mr. Hollis concerning this transaction.

Present use not considered in valuing land.

With regard to the difference in value between Zone 1 and Zone 2, to begin with I am not considering the market activity that is on those zones at the present time as a gauge of values because stripped of its improvements I don't know whether

Trans.

- 525 the stockyard arrangement would be rebuilt the way it has been even though I am valuing the property from the standpoint of the highest and best use. In other words, my shading down of the values from Zone 1 to Zone 2 is not on the basis of the actual use which is made of that property. I feel that the higher levels of values would exist at the southerly portion of the zone because it has a more direct access closer to the zone itself, and that the southerly portion would lend itself to such a development even for a stockyards use as might require the construction of such things as the change Building. I feel strictly on the relationship of Zone 2 being more remote from the center of the related activities of all of the district, that it should have a lower value than Zone 1. No, I can't say
526 that Zone 2 has closer accessibility. The way I look at it stripped of all improvements the only Viewed as access which Zone 2 has is through Race Court naked land. and the north end of Franklin Street.

Although I stated that in valuing property it is necessary to raise the comparable property to a level of the property being valued, yet I did not carry over into the sales comprising the Blayney-Murphy or Cudahy tracts the cost of the viaduct from that plant across the railroad tracks to the stockyard area. I do not think that is tantamount to the cost of either lowering the Cudahy tract to the level of the stockyard or raising the level of the stockyard to the Cudahy tract because I regard that viaduct strictly as a plant facility. Yes, it was necessary to make that tract usable in connection with the stockyards, but I think if the tract had been on an exact level, the Cudahy people would still have built a viaduct to get the stock up to their killing floor, and that makes it a plant facility and has no connection with the land itself as an element

Blayney-Murphy viaduct.

Trans.

528 of value. No, I don't think the viaduct is for the purpose of making the land as usable as the Swift land. I think it is to get the livestock into the place where the Cudahy people think it would be most efficient for them to operate their plant; it is not the same as building a subway because I got the distinct impression from the Manager of Cudahy that they considered bringing the livestock to the top of the plant more efficient. No, I don't know whether the manager was here when this viaduct was constructed. The Blayney-Murphy people were, of course, the constructors of the viaduct.

529 I have the Interstate Commerce valuation in my
531 working papers.

Interstate
Commerce
Commission
valuations.

Zone 2 of the Burlington extends from the County line to the quarter line west of Race Street, and was appraised by the Interstate Commerce Commission at \$1,000 per acre in 1917, and \$750 per acre in 1934. Zone 3 extends from the last described line to the center line of Franklin Street and was appraised at \$1,875 per acre and in the latest appraisal at \$2,500 per acre. Zone 4 extends from the projection of the center line of Franklin Street to the projection of the north and south alley through the center of Block 2 in West Elyria, and was appraised in 1917 at 7½c per square foot and in the latest appraisal at 8c per square foot, or roughly \$3,500 per acre. Zone 5 extends from the projection of the alley to the center of Block 2 West Elyria to a distance approximately 185 feet southwesterly from the center of the subway, and was appraised at 70c per square foot in 1917 and 25c per square foot in the latest appraisal. Zone 6 of the Burlington extends from the last named line in Zone 5 to the northerly line of 46th Avenue, and was appraised in the 1917 appraisal at 12½c per square foot and in the latest appraisal at 6.9 cents

Trans.

per square foot. Zone 7 extends from 46th Avenue to the section line between Sections 22 and 23 to the bank of the river, and that was appraised in 1917 at \$800 per acre and in the latest appraisal 533 at \$1,000 per acre. These valuations have not been litigated but in spite of the decision in the O'Fallon case and the repeal of the recapture clause, the valuation is a very important thing to most of these railroads on account of the money they are borrowing from the Government and the reorganization possibilities, with the power of the Government to force the revamping of the capital structures. So far as I know the Burlington has not borrowed any money, but I think the Colorado & Southern has. I don't know of the Union Pacific having to borrow any money. No, I could not state that the Burlington has agreed to these 1934 valuations. The Union Pacific has agreed to them.

535 I think it is almost impossible to compare the former Government appraisal with my appraisal. The former Government appraiser reached different values than I did for land in Zone 2, but I couldn't say that it was due to the existence of a lack of any element of value. I have zoned the property differently and he must have placed a lower value on some of the land than I have or else our total results would not be so close together. Yes, I would say that the general utility value of Zone 8 is why I gave it a higher value per acre than I put on any 536 of Zone 2, 4, 6 and 7. As to Zone 7, one of the things I considered in the decreased value of that zone is the fact that 46th Avenue intersects and isolates this from the rest of the stockyards area. On the other hand, I have considered and given more weight to the general alternate utility on Zone 7 as against the use for stockyards purposes because it is attached and available for use by some alternate

Valuation of
Zone 7.

Trans.

utility or industry. No, I can't say that I recall any of the provisions and reservations in the deed 537 to the City for 46th Avenue. No I was not aware of the fact that the Stock Yard Company has the full right to cross that street with tracks, roadways and by any means for the ingress or egress of livestock, although the ordinary highways of the City are not available for the driving of livestock, but I don't think that would make any difference because I still believe that the alternate utility on Zone 7 would control.

Murphy barn.

I have now checked the Murphy barn sale and I would say that insofar as the sale in the report is concerned, I am satisfied it is a transposition of the figures, but in the course of the check-up on the thing, I had the benefit of an inspection jointly out there with Mr. Chase of the Interstate Commerce Commission who also has that piece of information listed, and there is some doubt but what the improvements on that property as they exist today were not the ones that were on there when the sale was made, and for that reason I am not prepared to state what the effect of the use of that sale ultimately would be. Insofar as its use in my report is concerned, of course, if I had reversed the figures according to the way they were used by the Stock Yard Company appraisers in the prior hearing, it would reflect a materially higher unit value for the sale and that in turn would have some effect on the unit value of the zone. You realize that it is only one of the pieces of information which I have considered:

Reflects a
higher value
than used in
govt. report.

539 Did not study other large industrial tract in Denver.

No, I made no special study of the industrial area around the Gates Rubber Company plant. I just investigated such data as had been used in the other proceedings and some supplemental information further down towards town which I got from

ns.

the Interstate Commerce Commission to get the perspective of value. The same comment would apply to the Denver Sewer Pipe & Clay location on the north side and the Burlington Yard industrial district. Yes, until my work in connection with the appraisal for this hearing, I had not appraised any property in Denver.

No previous
experience
in Denver.

0 The records show that the 16 inch main running from the meter box on 46th Avenue and Lafayette was completed in September, 1920. There was quite a serious break in commodity prices following 1920. I was told at the City Hall that the pipe cost \$8,-
1 292.49 installed.

2 Government Exhibit No. 32 is my tabulation of condition per cent. The water system is on an adopted condition per cent of 79% and that reflects the so-called 50% ownership of the 12 inch main. I did not figure any separate condition for the 12 inch main, but it was considered in conditioning the entire water system. Of course, the water system as a whole was not visible and the same is true of the sewer system, and both are governed to a considerable extent by the condition visible at the connections and in the manholes. We inspected the meter boxes and manholes and the pipes in the pen areas where they come out of the ground. No, I do not have any knowledge as to the condition of the 16 inch main as compared to the 12 inch main and did not make that inspection myself at the meter boxes. Assuming that you do have title to the 16 inch main, I cannot say what amount would be added to your reconstruction new value as found by the Government. I would have to make further inspection, or have one of our engineers make further detailed inspection.

Condition
per cent.

Water system.

Opinion based
on inspection
of visible
connections.

The other meter boxes are scattered in various places throughout the yard. I do not recall offhand

Trans.

544 where they are. There are meter boxes where the Swift & Company mains come off to measure the amount of water taken by Swift and Armour. I inspected certain ones of the meter boxes but I don't know whether I saw them all. No, I wouldn't say that my estimate of the condition per cent of the water system is a blanket estimate without regard to the time of installation. I knew the age of a considerable portion of the water system from a review of the investment account. It is a cast iron main. Yes, I am familiar and have seen the advertisements about cast iron pipe in perfect condition after about 150 years. No, I don't think you could take into account in figuring the condition per cent the lapse of time that cast iron pipe is in the ground only to the extent that the lapse of time would give a general indication of how long that

545 pipe might last. The condition per cent that we sought to fix would be what it would have been had we seen the pipe and given consideration to the going out of service of that pipe in connection with the going out of service of the connecting units which it was serving. The main itself would suffer from obsolescence or from straight abandonment and functional depreciation if the service connections had worn out and were no longer usable. Yes, when I speak of functional obsolescence I am getting into the realm of serviceability to some extent.

Opinion based
solely on
estimate,
without
inspection.

Only inspec-
tion was of
faucets and
fire hydrants.

When I spoke of making inspection of the mains where they come out of the ground, I meant the galvanized iron faucet pipe and connections in the cattle pens and trough and places like at the fire hydrants.

546 If you have full ownership of a 12 inch main then the figures shown in the detailed exhibit on the water system covering that portion of the system would be double. In Government Exhibit 30,

Trans.

- at page 497, and in Government Exhibit 28, being
547 the summary statement, taking the figures there,
there would be added \$5,062 for material and labor.
548 The amount of the additions including general over
head would total something over \$6,000.

In the material and labor figures, the manholes
and other fittings and connections are listed sep-
arately, and so far as I can observe there was no
breaking down of the percentage on the fittings,
but they were included at the full 100%. The 50%
549 has to do with the pipe itself. The reconstruction
new cost of the 16 inch main, including all overhead,
is \$13,818. The details as to the unit prices on the
material and labor are in my working papers. Yes,
it would be possible to get up a schedule for the
record.

- 551 MR. BOSWORTH: Now at this time the respond-
ent states that it will accept the Government recon-
struction new value for all items shown in Govern-
ment Exhibit 28, subject to the additions testified to
by Mr. Zelinski in yesterday's hearing, contained
in Government Exhibits 26 and 27, and subject to
the determination of the legal question concerning
the title to the 16 inch main and the 50% equity
in the 12 inch main.

Respondent
accepts govt.
figures on
reproduction
new value.

MR. MILES: You wouldn't want to stipulate,
would you, that your figures or the Government
figures, either one, could be accepted following the
1930 stipulation?

MR. BOSWORTH: We would prefer not. We
could not do so at the present time because our
figures are not in evidence. We prefer not to do
so because we are willing to accept these figures, and
I think that is the best way of handling it.

Trans.

MR. MILES: And of course, the depreciation, you have not considered; it is simply the reproduction new?

MR. BOSWORTH: Simply reproduction new.

MR. MILES: Plus the things that you mentioned?

MR. BOSWORTH: Plus the items which I have mentioned.

One year construction time required.

Use of Company labor.

553 (Witness continuing). Yes, I estimate that it would require about one year within which to build the plant under the theory of reconstruction new.

554 I haven't got any estimate of the total number of men because I had that worked up in detail. I would have to make a summary of that to determine the total number of men. I considered that it could be done in one year's time by dividing the men necessary to construct different portions of the project simultaneously. In my opinion, it could be done in that way. Yes, if simultaneous construction could not be had, it would extend the time.

Such a newly organized entity would not necessarily be able to employ its own labor at the start, but I believe it could arrange, when properly organized, to employ its own labor. Of course, if the entity went out and did the work of construction itself with its own organization it would have 555 to go into the general labor market to obtain the men necessary, but I had assumed that the construction would be performed on a contract basis by a contractor on bids received. No, I wouldn't say that the amount I figure in Government Exhibit 31, that could be done with company labor, is a large part or even a material part of the work compared to the total construction project. I do not have the details before me as to the difference in wage scale as I found it on company labor from the going wage

Trans.

scale, but which is a material difference on most of the classes of skilled labor particularly. Yes, my \$50,000 of difference as shown in Government Exhibit 31 means that the total labor bill might be many times that amount. The \$50,000 is the saving. No I could not state the percentage of difference in the wage scale. No, I do not consider the use of company labor in that computation is inconsistent with the entire theory of reconstruction new, because the company itself, in the past, in constructing the

556 sheep barn, used company labor on some pen construction. Yes, it is my understanding that the history shows that the major portion of the plant has been constructed by contract and that only incidental construction, which was handy and reasonably possible to do, was done by company labor.

Sheep barn.

557 Yes, in 1917 it is my recollection that you built a large section of the cattle division, or pen area, and the loading and unloading chutes. Whether it amounted to 29% of the total pen area I don't recall, but it was a very large proportion of the plant. In 1928 there was a further extension of a material portion of the cattle division. No, I did not figure whether it was 16½% of the entire present pen area, but I know it was material. No I did not investigate as to whether or not in either of these construction jobs company labor was used in the construction.

Amount of
1917 and
1928 con-
struction in
cattle di-
vision.

558 Yes, I am familiar with labor union rules to some extent. I understand that your force at the yards is not unionized. No, I am not sure there would be a refusal to work on the part of the union men with the non-union men. I have observed conditions in other places and the union rule is not stringently applied.

Labor Union
rules.

559 I do not know in detail your force of men. I don't remember whether there were only four carpenters Company
labor small
repair force.

Trans.

**Sheep barn
1929.**

**Method
pursued in
determining
reproduction
new value.**

- or not, but there were not many. Yes, it is a small repair and maintenance force. No, that force would not be sufficient to do the work I had in mind in Government Exhibit 31. It would have to be expanded. Yes, I think even though the work was temporary it could be expanded by hiring men on the same scale as you hire permanent labor. The sheep barn, which was a major construction, was made in the year 1929. My understanding was that 560 while the contractor's work was still in progress some work was done by the company force. No, I did not investigate the work because I just took Mr. Reno's (the company engineer) statement that the company did do some work in the pens in the sheep barn. Yes, I would say, from the history of the yard, that the management has not engaged upon the use of its own force to do any large amount of what I call capital expenditure work.
- 561 Taking for example Hay Barn No. 3, which is listed in Government Exhibit 28, page S-6, under item Y-3, with a total reproduction new cost of material and labor of \$13,372, that reproduction new cost was arrived at by taking the inventory which was assembled and pricing out the various classes of material on a basis of unit cost per yard or thousand feet of lumber, per thousand of brick and then priced out separately the labor which it would take to install that quantity of materials. Yes, "CY" means cubic yards and "SF" square feet. The prices for the material are taken from a schedule which we built up, by sending out price lists to local dealers to give us an estimate as to what they would deliver us material for on the site of the job either by truck or rail. In lumber, due to the different sizes, etc. 562 we worked out a weighted average price per thousand feet. The abbreviation "m b m" means thousand 563 board measure.

Trans.

On page 395 common brick is given at \$18.80 a thousand delivered on the site and that includes some labor of loading and unloading as well. The labor incident to moving the brick, for example, from where it was unloaded to the job, is priced in the labor and is not included in the material cost.

- 565 Yes, the labor cost of \$13.95 is the labor cost per thousand brick and is worked out from our formula in the working papers. It does not include superintendence or any of the general overhead or construction overhead. No, my inventory or detailed inventory is not in the record. Yes, our staff did actually inventory the number of two by fours according to their best judgment, and the number of various sizes of lumber, the squares of brick, etc. When it came to the cattle pens, where a typical pen could be used we figured the lumber in that, the paving and the drains, and then multiplied all that by the number of typical pens in the same area. Where we couldn't do that the special measurements for the particular pen were taken and the quantity of lumber computed for that. We made up a schedule of the lumber or any material to build a typical pen or a typical gate, and then priced out all that we thought were typical on that basis, and then multiplied that by the number of typical pens or typical gates to get the re
568 construction new cost. The same applies to the sheep barn and to other units of property.

Unit prices
and unit costs
determined.

Yes, we added to the actual labor and material costs certain construction overhead and then in the general summary we added our general overhead. That is found on page S-2.

- 569 Yes, omissions and contingencies are an overhead for which we allowed 5%. Organization expense is
570 not included in any of these overheads. It does include the item of salaries of officers and clerical help and hire which would be necessary to look after the

Organization
expense not
included.

Trans.

Schedule of
Depreciation
and Composite
Life.

payment of vouchers and checking up on the performance of the contracts during the period of the construction, that is to say, during the one year period of my estimate. The item of taxes during construction is both on land and on structures. It is equivalent to one year's taxes paid by the company just preceding the date of valuation. We have no method of determining what the taxes might be during the period of construction. The interest during construction (on the buildings) is on the theory that all of the money would not be used until the year period was over, and therefore it would average one-half of the 7% allowance on the full year basis, or 3½%.

The schedule on page S-10, caption "Depreciation and Composite Life" is the estimated expectancy of life for the average of the entire property. It is determined by taking the weighted average of the annual life expectancy of each of the individual units, which is my judgment as to how long the individual would last under normal maintenance with due regard for obsolescence and inadequacy. For example, I believe that the average annual life one would expect for the Exchange Building under normal maintenance conditions would be 50 years, making due allowance for obsolescence and inadequacy which might develop over that interval of years, from the time in which the building was constructed.

573 Yes, the average expectancy of a brand new building is 50 years.

Q. Well, then, with that in mind, if this new Exchange Building has the expectancy of life of a brand new building, how is it that you give as condition per cent 84%.

A. The reason for that is that on inspection we find that the condition of the building is better than one would expect to find just on av-

Trans.

erage, ordinary maintenance during its period of existence, and for that reason I reached the conclusion that either the building has been maintained better than the average or for some other cause its present condition is superior to what the average would show.

(Witness continuing). Yes, my column B is the estimated life from the date of construction of the unit and not from the date of my appraisal, so that column C represents the percentage that should have been taken all along on the straight line method from date of construction down to the end of the useful life of the structure. Yes, the theory on which my straight line depreciation schedule is built, is totally different from my theory in Government Exhibit 32 concerning condition per cent. Yes, I used 575 mortality tables and my own experience, in determining the per cent of depreciation. The tables I use have been prepared by the Railroad Presidents Conference Committee and books and pamphlets on "life expectancy" of buildings. Yes, I considered the peculiar climatic conditions in Denver affecting rot, rust and decay and I felt that for certain portions of the plant, the special condition at Denver might apply, but on the average, the figure which is used here for the life of any structure is that taken from these mortality tables throughout the country. No, I have had no experience with your climatic conditions prior to 576 coming here in January. I think Wichita is about the same as this property so far as special conditions are concerned.

No previous
Denver
experience.

Yes, in making my inspection for the purpose of Condition determining the condition per cent, I analyzed the per cent. work which has been done in maintenance and repairs to keep the pens, for example, up to condition. In determining condition per cent I went up and down the alleys and looked into each of the pens

Trans.

very carefully and walked into all of those pens where from the alley I could see that there was some special thing I should look at. If the pen were clean and it was quite clear I could see everything from the alley, I didn't bother to go into it. In conditioning the pen area in the cattle yards, for example, I made a special note of the condition of the paving and the condition of the woodwork and fixtures, such as watering troughs. No, I did not pay any attention to the year of the construction only to the extent that I was aware of the time that certain of the area had been constructed. As to the 1928 construction, I do not recall the details of it and I don't remember whether or not in that construction there had been a large number of new gates added to the pens within a recent time, but if it were apparent from a visual inspection I was impressed by it or possibly even made note of it. No, I did not notice whether the 1917 construction in the triangle south of the Exchange Building was in better condition than the 1919 construction in the same area, because I inspected each pen in that area and the inspection paid no attention to the date of the construction of any of the areas. As to 38 new gates being put on the main alley in 1934, if the condition of those gates were such as to have that stand out, I observed it. No, we have none of that detail in our working papers. All of that is in Kansas City. I think my staff followed much the same method. The figures were weighted as to areas, but not as to units of construction. Yes, my notes as to the cattle area are also in my working papers at Kansas City.

Witness was requested to obtain notes and introduce them, if necessary, out of order.

582 In determining the condition per cent, the age was taken into account to the extent that it was observ-

Trans.

able. Of course, I myself knew the age of certain of the units of the property, but this condition per cent was not figured on the basis of age.

Condition per cent. not based on age of structures.

Q. Well, now, I think you referred to the fact that it is impossible to observe, or was impossible to observe, the condition of the water system and the sewer system, but in your condition per cent statement you have the sewer system, in at an average or your adopted value of 75%, I think, and the water system at 79%, how was it that you reached that conclusion with regard to those items unless it was in some manner upon the age, that is the length of installation or time of installation?

583

A. Well, that would be one place where the age might be working unconsciously. What we attempted to do, or what I, myself, personally attempted to do, as I said, was to gauge what must be the condition of those portions that I could not see based upon what I could see.

Age did affect condition per cent. estimate in water and sewer system.

584

(Witness continuing). Yes, vitreous tile pipe itself has almost an indefinite life, but in a sewer, in addition to such life, there is a mortar joint and settlement or impact above the thing would have a tendency to jar loose the joint. No, I did not make any investigation of the history in this particular locality of breaks due to settlement, but I did investigate the surface condition to satisfy myself whether such a thing would take place, and I understood from stockyard people that some of these sewers had blocked up from time to time due to settlement, and that together with the inspection that was possible at the manholes and other places where the sewer might be looked at, such as at the head walls on the river and things of that kind, indicated a 26% deduction for condition.

Sewer system condition per cent.

585

Trans.

The witness was asked if it were not true that the head walls had all been constructed brand new within the last year.

(Witness continuing). I couldn't exactly state as to the condition of the individual head wall, but I could look into the sewer from it.

Q. Yes, but as a matter of fact, due to the change in the location of the channel of the Platte River, every sewer there for many feet is brand new, is it not, the outlets?

A. The outlets themselves are, but there has been some disturbance of those head walls even since they have been constructed. Now, I couldn't state with regard to each individual head wall, what the condition is, but it seems to me that at least one of those has been replaced since it was constructed. I don't recall the details on that, but in the course of the inspection that is a thing that I noted, and of course where the condition is new or where it is possible to observe the new condition, that portion of the sewer would be considered as in much better condition than that which was in another part of the property and was older.

(Witness continuing). Yes, I might have depreciated certain of the sewer lines elsewhere say 35%.
586 Yes, that was based only on such inspection as I could make. No, I couldn't state that I recall any particular locality or any particular sewer which was depreciated in my opinion less or more than 26%. I don't recall. In my own inspection there were some but I wouldn't know what sewer it was. Yes, that was based upon my inspection of the manholes.

Much the same difficulty applies to structures such as the new Exchange Building, because we didn't tear out any plaster to see the condition of the walls

Trans.

or rafters. No, I wouldn't say that we took into account the so-called mortality tables. The condition per cent of a structure like the Exchange Building took into consideration such repairs as were apparent and such replacements.

I gave no consideration to the estimate of the remaining expected useful life of any of the items in Government Exhibit 32 or Government Exhibit 28. 588 That was a separate and distinct estimate. Of course I knew as an engineer what in general might be the average life for certain classes of the property. Yes, unavoidably there was some relationship in my mind between the remaining useful life and condition per cent, because those are things that one can hardly divorce from his mind.

With regard to the railroad trackage relay rail sells somewhere in the neighborhood of about two-thirds of the cost of new rail and sometimes a little less on occasion. Yes, in Exhibit 28 and in Exhibit 30, at page 482, I specify that some 450 tons of rail was all relay rail and I gave it a condition per cent of 79. No, I do not think, as a matter of fact, that the depreciation in that construction has already 590 taken place and been actually taken into account by the fact that it is relay rail. Relay rail is a distinctive commodity by itself and takes a classification virtually the same as new material on a lower price basis. The relay rail is in its second cycle of life.

593 Government Exhibit No. 37, being the schedule of Govt. Ex. 37 prices of material and labor requested of the witness received. previously, was offered and received in evidence.

596 (Witness continuing). Yes, in Government Exhibit 28 I show straight line depreciation as a total of \$95,020 per year. That is the amount of money that would be set aside each year to recoup on an Depreciation allowance.

Trans.

nual basis the total cost of reproduction of the plant. No, if interest on land during construction were to be added, I do not feel that there would be any additional allowed for depreciation added to the \$95,000 figure, because interest on land is an element of cost that is tied up to a class of assets which is not depreciable.

598 Yes, in a way my system does force the regulated utility to take the speculation on an increase in the land value rather than recognizing that interest as part of reproduction new cost, but there are certain things the industry gets the benefit of which the regulatory power cannot control and I think that the interest on land is one item.

Yes, I would agree that to the extent of the additions which I have made in Government Exhibits 26 and 27 concerning the 12 inch main and the 16 inch main, there would be an additional straight line annual depreciation allowance to be added to the \$95,020 figure. It would be on the basis of 2% per year of the additional cost.

Additional depreciation allowance should be made.

No relation between condition per cent and period of remaining life.

599

Re-direct Examination

No, there is no relation between the condition per cent and the period of remaining life as set up in my percentage tables, the reasons being that the condition per cent is based on observation of the plant units while the composite life has been arrived at by use of the life expectancy tables and the normal experience which one would expect to have on the plant in the course of normal maintenance. All these factors for composite life may or may not work if given time, and therefore what one has worked is seen on inspection and observation. Hence the two approaches are entirely different and independent of each other. Yes, obsolescence is considered a factor in condition per cent where it is observed which it

600

Trans.

may or may not be, but it is always considered in life tables. That is one of the reasons why there is no relationship between the two.

601 I think I can best explain that in the steps again.

To determine condition per cent of a tier of pens, we will say, those on both sides of an alley in the course of inspection, I took note of the condition of the component parts of the pens, we will say, the paving and the fences and the watering troughs and the other fittings, that are in the particular pens. Having looked at all of the component parts of the pens, the condition per cent arrived at, in my mind, now, for the individual pens, was based upon the condition per cent which I thought was applicable to each of those component parts, and in carrying that a step further to arrive at the average condition per cent of a tier of pens, that is pens on either side of an alley. I then bore in mind the average condition per cent of each pen and that enabled me to place a condition per cent upon the tier of pens which was, of course, the units into which we had broken down the pen area for the purpose of conditioning. Now it was from those units, — and by the way, those are the units which Mr. Bosworth has asked us to submit the tabulation from our working tables, — we worked out the average condition per cent for each pen for the entire cattle division. I only took into account the age, where I think it was an observable thing. Either a pen looks very old or looks relatively new, and to that extent I gave consideration to age.

602 Zone 5 is the colored plat shown on respondent's Exhibit 1 on the west side of the Platte River separated from the Platte River.

When I gave the Interstate Commerce Commission valuations yesterday I referred to the Chicago, Burlington & Quincy Railroad. The other railroads in

I. C. C.
valuations.

Trans.

close proximity to the stockyard land are the Union Pacific, the Colorado & Southern and the Northwest-
603 ern Terminal Railway. The Northwestern Terminal Railway has only one zone joining directly stockyard property and it adjoins Zone 3 and 2 as listed in my appraisal on the west and is I. C. C. Zone 4 appraised at \$2,000 per acre approximately in 1934. There is a Union Pacific zone listed as Zone 14-a on which the concrete roadway from 46th Avenue is located in part. It adjoins Zones 1 and 4 and just barely reaches to Zone 2. In 1919 it was appraised by the Interstate Commerce Commission at 23c per square foot, and in the latter appraisal, which is about 1934, at 8c per square foot.

On the Colorado & Southern, I. C. C. Zone 11, extending from the east and west section line dividing sections 15 and 22, to a point approximately 300 feet west of the center line of the Burlington right-of-way, is appraised at $2\frac{1}{2}$ c per square foot in the latest appraisal.

604 Zone 12 of the Colorado & Southern extends from the last mentioned boundary line to 46th Avenue, was appraised by the Interstate Commerce Commission at 6.9 cents per square foot.

Zone 13 of the Colorado & Southern does not really adjoin any of the stockyard property, but it is close enough to have some influence. It was appraised at \$2,500 per acre and runs up to Brighton Boulevard. There are some Union Pacific zones bordering on 46th Avenue virtually across the street from the horse and mule division. These zones are irregular in shape and one of them, 15-B, is appraised at 6.9 cents. That is the same as sale 35, 36, 37 and 38 and also the triangle across Brighton Boulevard hooked with an arrow on the sales map. There is also Zone
605 15-NC, meaning "Non-carrier," which is at the intersection of Brighton Boulevard and 46th Avenue,

Trans.

appraised at \$3,500 per acre in 1919, and \$1,800 per acre in 1934. It is my understanding that both the Interstate Commerce Commission and the Union Pacific people have agreed to these valuations. The Burlington has not agreed to the latest appraisal.

606 Yes, I testified that I valued these lands from the standpoint of the highest and best use and also consider the value as based upon some alternate use. In general if I were valuing the property from the standpoint of other types of industries, the presence of the packing houses might influence my values down. Yes, I have considered this tract as an assembled area, which added to my value. No, I could not state how much.

Highest and
best use.

607

Re-cross Examination.

Yes, I testified that I had appraised this property in accordance with my interpretation of the Minnesota rate case, which is with all the packing houses and other related industries in place, but with the stockyards and the improvements which themselves constitute the underground and superficial structures of the stockyards removed. No, I do not think it is inconsistent to say that with this interpretation of the Minnesota rate case the presence of the packing plants would influence the value downward to other industries, because in seeking to fix the upper limits of value on the property one of the controlling things; of course, is to determine what the land might be worth for an alternate industry, which is of a higher character than the stockyards company, and if it were so available I would then have to look for the values of that higher use. In this case I reached the con-

Basis of land
valuation.

Not valued for
stockyard.

609 clusion that a stockyard utility would be its highest utility. Yes, in this case the lessening in price due to the packing plants being there is more than offset by the fact that the zoning law of the City

TADS.

and County of Denver requires that an industry of that type and of the type of the stockyards be in this section, but I still had to look to see if the property under the circumstances could be used for a higher utility. I can't say that I know why this area was set aside for stockyard and packing house use under the zoning law, but it would occur to me that the location was one where it was desirable to restrict a nuisance type of industry so that it could not affect other areas in the city. By nuisance type of industry I mean that this industry, due to the smells incident necessarily to the slaughter of animals and their keep, is not attractive. Yes, I think the fact of the prevailing winds influenced the establishment of this zone, and I so stated in my report.

- 610 Yes, Sale 35 as shown by the map and on page 97 of Government Exhibit 28, had a sale price for the naked land in 1922 of \$11,600 for about an acre and a quarter, or 20c a square foot. No, I don't believe that the value of that tract of land has gone down from that point from the standpoint of general utility to 6.9 per square foot, but in the acquisition of so much land, as the Union Pacific acquired in this industrial territory, the 20c which they paid per square foot for a specific parcel may not have been what it was worth.

(Witness excused).

- 612 MR. CHARLES E. COLLINS, a witness called by the Government, testified as follows:

I have lived at Kit Carson, Colorado, for 29 years and my principal business is ranching. I am also President of the Kit Carson State Bank and have several other interests. I am president of the American National Livestock Association, whose activities are in the seventeen Western States, and the organi-

rans.

zation has been recognized as representative of the cattle industry in the West. I would say we have \$13 three or four thousand active paid members, and most of them are producers and shippers of livestock, shipping to all of the principal stockyards. A good many of them would ship to Denver. Besides raising cattle, I farm. I do not raise either hogs or sheep. I produce about twelve to fifteen hundred calves a year. Some of them when I feed them up I ship to some terminal market, but when I don't have corn to fatten them I usually sell them direct to stockers and feeders. I hardly ever go to the market with any stockers and feeders.

(The witness was asked if he had any general statement that he wanted to make. Witness continuing).

Well, about all I have to say is that the American National is claimed or thought to be the father of the Packers and Stockyards Act. In the beginning the American National started out to try and see the hole card of the big packers but found that was a difficult job, but whether we are the father of a law or not it has been a law and we have really felt that it was a useful and necessary Act, and it has been the policy of the American National for a number of years at their conventions that they have repeatedly resolved 15 that they favored a reduction in market, in stockyard charges and commission rates. I believe that the stockyards and commission men have a right to make profits above anybody in the whole country. I have paid a great deal of attention to these hearings and it seems that they resolve simply upon the values of the property. I don't feel that I am competent to make any statement about that because I don't know as to the value of the property, and I have felt that if there was any part of the stockyard business that was useless to the marketing of producer's cattle,

All users of
facilities
should pay.

Trans.

that the burden of that expense should not fall upon the producer. I stated in the St. Joe hearing several years ago, and I still think it is right, that everybody that uses any part of the stockyards property should pay their proportion so that the burden of the whole expense would not fall on the original shipper of the livestock.

616 It would be a mere guess for me to say just how much difference there should be between the yarding rate on cattle and hogs. I know there is a difference. Yes, I know the stockshow property and am thoroughly familiar with it, and in a way with the show. As to its being a benefit to the industry, that is a controversial question. I am one of those fellows that has opposed many of the activities of anything to promote livestock and farming in this country. I have opposed this county agent business and this ex-

617 tension business and agricultural college, and any activities that I thought tended to broaden the field of agriculture and livestock. I have felt that with the exception of a few periods we have had a surplus of the product and we didn't need any encouragement to go on, but that is my own opinion. There are a good many smart people who disagree with me. From the betterment of livestock and the promotion of the industry and the building up of a better grade of livestock, there isn't a bit of doubt that these shows are helpful.

618 Yes, I travel around the country quite a lot from ocean to ocean. I have been in practically all of the western states the past year and a good many of the eastern states. It would be pretty hard to arrive at any conclusion of the population of livestock in this country by driving through the country because you don't see very much that way. The only way I arrive at that is the statistics that the Government puts out in regard to the livestock population. For

The Stock Show.

Show beneficial.

Trans.

example, the crop and market report which we get daily and weekly through the Bureau of Agricultural Economics is one of these publications. These figures show that this year there are 8 or 10 million less cattle on the farms than on January 1, 1934, and a couple of million more than we had on January 1, 1928. I would think we had the normal number of cattle on the market or at least the amount that were marketed in 1928 or 1929 or 1930. Of course if the price doesn't justify, there is a tendency to hold them over, but over a period of years they have to go to market and we ought to have a normal supply of

620 cattle over a period of years. As to sheep, there might be a tendency to hold back the ewe lambs for a year or two to build up and there might be less coming to the market, but it is just kind of a guess because there are many things that could happen, such as the drought or the operation of a Taylor act cutting down on cattle. As to the hogs, the Government figures show something like 20 million less than normal, and it would be hard to tell how long it would take to build back the hog population, and this Government hog-corn regulation might delay it considerably. If everybody in the country having a little corn could buy a couple of sows and hold them, it might put us back in a couple of years, but it will all depend upon prices.

621 No, I don't think our Association adopted any resolution directing some of us to report at these hearings and testify. I presume it was overlooked. It has been kind of a stereotyped resolution that was passed so often I think it was not passed last year.

Cross-examination.

Yes, I think our organization has been of benefit. As to expenses of \$135 for entertainment of the American National at its annual meeting, which was made by the stockyards company, my version of that

Trans.

is the same as any kind of business, I don't care whether it is the stockyards business or my business, I feel that anybody ought to have the right to donate or contribute a little if they want to or feel like it. I know I have a business out here at the stockyards, the Blackleg Company, and we make quite a few contributions to different things, and strictly speaking maybe we shouldn't do it, but we feel as public-spirited people we ought to kind of go along with those things in a way. Yes, it figures in our cost of doing business, and people ought to have that right if they don't abuse it.

**Shipper does
not question
donations, if
not excessive.**

Yes, my statements about the hog, cattle and sheep population are taken from the Government reports. Yes, New Mexico, Colorado and Wyoming have been pretty hard hit. New Mexico will probably not ship as many cattle as they did last year or maybe in these drought years. I know here in Colorado it seems like when this Government program started in we must have had more cattle in the whole entire western country than we thought we had and there is no doubt that we did make quite a cleanup last year, and probably will not repeat the number of cattle for some time that we shipped last year, but I kind of feel that things will be fairly normal in the next year or two or three years as they were three or four or five years ago. Yes, in my own case, due to feeding conditions, the drought and other things, I shipped 1250 cattle to Ohio last fall, and that was about my last year's calf crop. It is true that those cattle when and if marketed are not available to the Denver market. There is no denying that there are a great many cattle sent on to the territory in the corn belt or farther East in Ohio; that is, there was an abnormal number that went out of the country to various eastern States because that was where the feed was that year. Yes, while that may

rans.

keep up the national picture, you would naturally expect to find that there were less cattle in the western country than there would be normally. This applies to Colorado, Wyoming and New Mexico chiefly. Most everybody, however, kept back enough cows and stuff, and if conditions are right we can build up our cattle population fairly rapidly because most everybody kept their breeding stock. Yes, as I remember it the Government figures show that 75% of the cattle purchased were female cattle.

Yes, the tremendous reduction in the producing end of the livestock business is bound to have its effect in that the high peak of cattle population we had on January 1, 1934, was a very high peak. We had entirely too many cattle in the country, and if the Government program hadn't been put into operation, why, no doubt the stockyards receipts, in 1934, would have gone up there tremendously. Of course, they did go up and a good many were handled through the stockyards, but we were at a tremendously high peak in 1934 of 67,000,000 or 68,000,000 cattle. Yes, that was the accumulations of several years holding back. Low prices caused a lot of cattle to be retained. People did not want to take the price and the cattle were held at home. The low price was tied into the depression, and the holding back did not help because we had to go to town with them sometime. Yes, as a banker, I know that a good many forced sales were made. A good many of the loans we turned over to the Government Regional to work out, and they are still working on them. Yes, that required a good deal of liquidation during those years of 1930 to 1934, but I think that these Government agencies aided to prolong the liquidation of these cattle. I think we might have been better off to have taken it on the chin in 1933. Yes, I think any of these

Trans.

Government agencies will be more lenient towards the borrower than any commercial institution would be.

- 629 Yes, I generally sell my stockers and feeders direct. I don't know that it is due to the fact that there is an 85% rate on stockers and feeders around the market. I have a pretty good herd of cattle and it is pretty well known throughout the country, and when I wanted to sell my cattle I had enough buyers so that I could always sell them at home. I don't think that applies generally to very many herds. There are quite a number of herds throughout the western country that have got a very good reputation among the buyers and I think the quality of the cattle and the people knowing it has more to do with it really than the 85% rate because there are a whole lot of buyers that do not know much about the 85% rate, do not know there is much advantage to it. Oh yes, there are a tremendous number of head of cattle that are not within such well known herds. Yes, I think there is an increase in the marketing direct of stockers and feeders. I
630 think that probably, due to the feed conditions in the East last year, more cattle moved direct, but that is a pretty hard thing to determine year by year.

- Yes, the purpose of the Taylor Act is to control the grazing on the public domain. In the past, as a rule, it has been free to the public. Of course, the idea of the Taylor Act is to conserve the public domain and to build up the ranges. It is my opinion that the Taylor Act, even though they do not get the amendments through at the present time, there are 80,000,000 acres, as I understand it, and if they get control that is going to reduce the number of cattle and the number of sheep that have been running in those ranges. That is the purpose of it.

rans.

Yes, I have a pretty good herd and have been in the business ever since I can remember in the western country, in Texas, New Mexico and all over the West. Yes, I remember the days of the old Texas longhorn. There is no question about the difference in quality and grade of the cattle between that and now. There is no question but 632 what that has been improved. And you have an early maturity of such better grade cattle per pound of feed. Yes, in those old days when the longhorns rustled for their own feed there was plenty of grass, —lots of it. They could range farther and find 633 better grass conditions than they get now. Yes, there has been over the years a marked improvement in the quality of the animals, and while I am not familiar with sheep, it goes without saying that all the western herds have been bred up tremendously from what they were in the old days. My recollection is mostly of the Mexican long-haired sheep, but there is no doubt that the quality has been improved. I presume that hogs are better too.

634 Yes, my idea is that the whole industry would be better off with a reduced supply, if you could regulate your supply of cattle down to about fit your consumption, but I don't think that is possible at all, as I told Secretary Wallace in February. I told him that I thought it was all hooey trying to regulate the supply of the commodity to the demand for the commodity.

Yes, I am interested in the Blackleg Company. Yes, I feel that the activities of that Company are beneficial to the industry.

635 As to whether or not the space rented in the Exchange Building to the serum company is used and useful property, I feel that as long as the Stock Yard Companies have buildings and facilities for these purposes and rent them and they pay the

Trans.

way, I don't see why it would be objected to, if they were not a burden to the business at all. If 636 you have built a livestock exchange and have the buildings it is part of the capital investment of the company. Yes, I feel that my company should pay the full rent necessary to carry the load on the particular space. I presume that my companies are doing that, but if in the beginning the Stock Yard Company had possibly built and acquired properties that were not necessary to the industry, I would question whether they would be justified in making the shippers carry the load, but when you come down to renting a room in the Exchange after you have already got the Exchange built, why, I don't see how you could limit it at all. From a convenience standpoint it would look as though it would be proper and good for the industry to have at one central place the railroad offices, the post offices, the serum companies and other companies dealing with livestock disease as well as the commission man. Yes, there are other buildings that could be rented up on 47th Avenue. There is a serum company in the old location of the Drovers National Bank, but people in business naturally like to get where the business is, and are willing to pay a little bit more for it.

Re-direct examination.

I could not say that it would help the Stock Yard Company in yarding cattle or livestock or in feeding the cattle or livestock to send out serum, but as to whether or not it would be proper for the shipper to pay for any deficiency, I don't see how you can get away from all these little things. As I stated, after the yard company has once built a livestock exchange and gets the money invested in it, it looks like it would be much better for the industry to make the space in that building help

Trans.

carry the load. No, I do not understand that the Government is objecting to that.

638 In regard to the Texas longhorn, there is absolutely no question that the education among the farmers and the changes in the economic conditions, would have caused the Texas longhorn to disappear. I have always contended that if you let the farmer and cattleman alone he will do all the improvements in this country without any education boasting at all. He will advance rapidly enough to take
639 care of the demand for the product.

As to whether or not an item of \$137 for enter-
tainment of the American National Livestock Asso-
ciation, and similar items, should be included in
641 the rate base, I have always thought that any kind
of a business, if they did not abuse, should have
the right to donate or spend a little money for
things that tend to help their business. Now the
Stock Yard Company's contribution of \$137 to the
American National brought in a lot of cattle and
no doubt they felt it would bring them in contact
with people and in a way help the business, and
it seems like to me that any sound business should
be permitted to use items of that kind along to help
the business. As to the Stockyards bowling team
644 and the Greeley bowling team tournament, off hand
I cannot see why those items should be included.

Donations and
subscriptions.

Re-cross examination.

Of course those items are too small to quibble about. I have always thought a stockyards company was very much like a public utility and a little different from some individual business. It is not so much of a monopolistic sort of a concern as the public utilities are and the chances are that they probably should be permitted to have latitude that
645 some other concern should not have. I appreciate

Trans.

Donations not excessive.

the stockyard claims that they are not in any way a monopoly, and perhaps they are not, but if a person comes to Denver he has only one market to go to, and I think it can be more strictly supervised than some other types of business. As to these recreation items of expense, I presume that is done in a great many large corporations, but it seems to me that I would just donate that out of my own pocket. Yes, I expect that many utilities figure such recreational items as operating expense, but as I say, whether it is proper or not I would not be competent to state. As to the whole question of donations and as to whether or not the total amount spent by the Stock Yard Company is only 3/10 of one per cent of the income, I would say

646 that if it is not abused practices of that kind would not be items of great importance, but I don't think the charge would be so heavy that it would particularly affect anybody. Yes, I think the regulatory power should go to the question of abuse rather than to the particular item.

648 H. E. BUFKIN, a witness called by the Government, testified as follows:

Direct examination:

I live in Kansas City, Missouri, and am senior accountant for the Packers & Stockyards Division, Bureau of Animal Industry, U. S. Department of Agriculture, and have been such since September 18, 1924, when I first entered the employ of that Division. My qualifications are as follows:

I am a high school graduate and received my public accountant training from the International 649 Accountants Society of Chicago, Illinois. I was connected with the Mississippi Central Railroad Company at Hattiesburg, Miss., for two years; I spent nine years as accountant and chief accountant

Trans.

for the joint general offices of the Missouri, Kansas & Texas, the International & Great Northern and the Galveston, Houston & Henderson Railways at Galveston, Texas. For thirteen months I was chief accountant for the Galveston Terminals, which included five rail carriers, and the Galveston Wharf Company. As a result of the civil service examination held in 1924 for senior examiner of accounts, Interstate Commerce Commission, I received an appointment to a position as accountant with the Department of Agriculture September 18, 1924.

Since my connection with that Department I have audited stockyard corporations located at Sioux City, Iowa, Sioux Falls, South Dakota, Kansas City, Missouri, St. Joseph, Missouri, Fort Wayne, Indiana, Oklahoma City, Oklahoma, Wichita, Kansas, Cleveland, Ohio, Seattle and Spokane, Washington, Ogden and Salt Lake City, Utah, Omaha, Nebraska, Denver, Colorado and other smaller yards. The audits made at Omaha, Kansas City, St. Joseph, Denver, Cleveland, Wichita and Sioux City were in connection with rate investigations. In addition to auditing stockyards, I have audited numerous commission firms, dealers, brokers, etc. throughout the United States and have also conducted various examinations and investigations of registrants under

650 the Packers & Stockyards Act. I am not a certified public accountant but have made arrangements to take the examination in the State of Colorado. About December 1, 1934, by virtue of my employment in the Packers and Stockyards Division I was directed to make an audit and report at the Denver Union Stock Yard, which audit I completed in about $2\frac{3}{4}$ months. I began work on December 2, 1934. In making the audit I had the assistance of Mr. Harry Baughmann and Mr. Gerald B. Svoboda, who were also Bureau accountants. I was assisted by

Trans.

651 no one else. As a result of that investigation I prepared a written report, a copy of which was furnished to the stockyards by the Department of Agriculture some time around the first week of April, 1935, as well as I recall. I may have talked to representatives or employees of the Denver Union Stock Yard with reference to the contents of the report, but I do not think I discussed its accuracy 652 or correctness with any of them. No representative of the stockyards has pointed out any errors therein to me.

I secured a trial balance from the records for each of the five years, 1930 to 1934. The trial balance is not shown in the report, but a summary thereof taken from my work papers is. It appears on pages 1 to 9 of the report, as numbered in Washington.

653 After securing the trial balance we analyzed all the accounts for accuracy and of course we made an analysis of the balance sheet accounts and searched for any information that was not clear in the records. To illustrate: Where the Stock Yard Company may have charged an item of expense to one account through error in posting, and we would find that was in connection with another account, we made the switch to the other. If the mistake was not apparent before making the switch we consulted with the stockyards representative.

After we analyzed all the accounts, both income and expenses, and balance sheet, we then reconciled the book surplus to the audit surplus, a summary of which appears on page 9 of the audit report.

Q. I wish you would make clear, please, what you mean by that statement.

A. The differences between our completed audit profit and loss figures were reconciled

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to the book profit and loss figures. In a great many cases we found where an adjustment was necessary, due to the fact that the Stock Yard Company would make an adjustment, for instance, in 1931, and the expense would be applicable to 1930. Under those circumstances, of course, we adjusted the expense back to 1930.

654 (Witness continuing). In making such adjustments we frequently consulted with stockyards officials to get the facts. The report on our audit covers a five year period through 1934 and does not take up any of 1935. I believe that about covers this audit report, so far as the work is concerned, in arriving at the final figures. A summary of the balance sheets for the five years is contained in the reports. January 1, 1930, which is the beginning balance sheet is shown on page 1 of the audit. A summary of the gross income for the five year period is shown in the audit on page 3. A summary of the gross expenses for the five year period is shown on pages 4 and 5 of the audit report. Gross 655 income and gross expenses are shown on those pages.

Page 2 shows the net income for each of the five years and pages 7 to 8 is an analysis of the surplus account since 1912 by years.

The figures on page 2 were reached by us after making adjustments. We eliminated certain items that were charged to expense on the stockyards records, and page 2 represents the figures after making these eliminations.

In a single sentence the analysis of the surplus account just referred to shows the changes between our figures and the book figures. To illustrate: On page 9 under additions, there is an item of \$22.00; it is the first item "Cigar Stand Equipment" transferred from operations. That item is shown

Trans.

on the books of the Company as an expense and covers equipment purchased for the cigar stand.

656 We transferred it and set it up under cigar stand equipment. Another instance is taxes adjusted to actual expense. That would be the fourth line under additions 1934, 1933, 1932, 1931 and 1930. We adjusted the taxes to the actual amount of expense for each year. Of course, the Stock Yard Company set up an amount each month and charged off the tax expense. The purpose of this adjustment is to show that the actual expense was either over or under the book figures, whichever the case may be.

To the best of my knowledge and belief all this work, done under my direction, correctly reflects 657 the records of The Denver Union Stock Yard. Our working papers show all the details that we obtained from the records of the Stock Yard Company books which were summarized in this typed audit report.

Government Exhibit 38, which was the report of the audit just identified by the witness, was then offered in evidence.

MR. BOSWORTH: Just a moment. Well, Mr. Examiner we don't question the accuracy of his figures and in not objecting to the admission of this exhibit for what it shows, we of course are not binding ourselves to the approval of the method followed by Mr. Buskin in certain instances. With that understanding we have no objection to the Exhibit.

MR. MILES: The understanding is all right.

THE EXAMINER: Government Exhibit 38 received.

It was then arranged between ~~ourselves~~ that the working sheets be left in the custody of either Mr.

Trans.

Christensen or Mr. Krake (Government representatives at the stockyards), and be available to representatives of the stockyards at all reasonable hours.

MR. MILES: Mr. Bufkin, the working sheets before you, are the separate folders identified so they can be separated any way or described?

A. Yes, sir, they are separated by years with the exception of one package, which contains balance sheet and miscellaneous other information contained in the typed report, but all of the other packages here include the balance sheet and detail of income and expenses by years, and are so marked on the outside.

Q. And the details shown on these detail working sheets are really the basis for this audit report?

A. That is correct.

The first folder of the working sheets, identified as Government Exhibit 39, was thereupon offered in evidence. This folder was described as covering the balance sheet analysis and miscellaneous data included in the audit report. The second folder, identified as Government Exhibit 39-A, was offered in evidence and described as covering the year 1930, the detail of the profit and loss figures and a summary of both with a balance sheet for that year.

Government Exhibit 39-B was then offered in evidence and stated to contain the same data for 1931 as Government Exhibit 39-A contained for 1930. Government Exhibits 39-C, 39-D and 39-E, described as covering the years 1932, 1933 and 1934, were thereupon offered and received in evidence.

Govt. Exhibits
39, 39A, B, C,
D, and E
admitted.

Trans.

(Witness continuing). Just to make everything clear my compilation which has been called Government Exhibit 38, is a summary of the working sheets which have been called Government Exhibits 39 and 39-A, B, C, D and E.

Government Exhibit 40 contains the deeds, leases and agreements in connection with The Denver Union Stock Yard Company for the various years and shows leases and agreements with different concerns over a long period and the deed of property 661 to and from The Denver Union Stock Yard Company. We obtained this information from the files of The Denver Union Stock Yard Company. I did not furnish a copy of this volume to the stockyards and I am not sure whether one has been sent to them from Washington. However, the original of these copies are in the files of The Denver Union Stock Yard Company.

Govt. Ex. 40
received.

Government Exhibit 40 was thereupon received subject to objection, if any, hereafter to be made on account of materiality of any of the documents contained therein.

(Witness continuing). In Government Exhibit 38, on the fourth page of the index at the bottom of 663 the page, is the caption "Statements." Under that caption we have indexed certain subjects. Statement No. 1, which appears on pages 266 to 275, shows the preferred stockholders of The Denver Union Stock Yard Company as of November 30, 1934. It also shows their addresses and the number of shares held. The information was taken from the records of The Denver Union Stock Yard Company. In fact all the information under that caption was obtained from that source. Statement No. 2, on pages 276 to 285, shows the same information for the common stockholders as of December 20, 1934. Statement No. 3, which appears on page 286, shows the maxi-

ans.

mum receipt of livestock for one day, one week, one month and one year. Statement No. 4, on pages 64 287, is a statement of gross payrolls for the calendar years of 1930 to 1934, inclusive. Statement No. 5, on pages 288 and 289, shows the detail of the inventories for the years 1930 to 1934, inclusive, by months. Statement No. 6, appearing on page 290, shows the dividends for common and preferred stock from 1913 to 1934. Statement No. 7, on page 291, is an analysis of construction labor. By analysis of construction labor I mean the number of men, occupation, hours worked, rate of pay, total compensation, as taken from the Denver Union Stock Yard payroll. Statement No. 8, which is on page 292, shows the repairs from 1918 to 1934, inclusive. Statement No. 9 is a summary of scale performance 1932 and 1934. By scale performance I mean the total number of head weighed, total drafts, days the scale was operated, and in this computation I have shown the average draft per head and the average draft per day. On page 293 is a typographical error. In the next to the last column the words "average draft per head" appears. It should be "average head per draft." I should like to have that changed.

MR. MILES: Let the records show that page 293 of Government Exhibit 38, next to the last column reading now "average draft per head" is changed to read "average head per draft."

(Witness continuing). Statement No. 10, on page 294, is the livestock receipts by years, 1896 to 1934, 65 which statement is separated between cattle, calves, hogs, sheep, horses and mules. Prior to 1906, however, there was no separation between cattle and calves. This statement also shows the receipts by rail and truck-ins. Statement No. 11, on pages 295 to 300, is the statement of total livestock receipts, separated by species, by months, for the years 1930

Trans.

to 1934, inclusive. Statement No. 11 is divided into Statements 11A, 11B and 11C. 11A is the summary of 11B and 11C. 11B covers rail receipts and 11C covers truck-ins.

Yard Traders.

666 The report of "trader livestock," that is, livestock purchased and sold by the traders, is being typed today. We are working with the Stock Yard Company officials in arriving at figures which have been taken from the trader records and order buyer records by both myself and two assistants and Stock Yard Company employees. We both had compiled this information some time ago, just subsequent to the completion of this audit report, and in checking it, that is, in checking the stockyards statements with the Government statements, we found some differences and it was necessary to go back to the records in an attempt to agree on the correct figures. It was mostly due to the condition of the trader records. In so many cases we found the records were not accurate. For instance there would be an order slip destroyed where we were attempting to check the order buying business. From records such as that we attempted to iron out all of our differences and balance the figures and the books. Now that we have all those differences ironed out, and the statement is being typed today, it will show the total number of head handled by these concerns and the disposition of the livestock. That is, the total number of head shipped and the number of head resold on the Denver Union Stockyards and the number of plants sold through commission firms. This statement will be ready tomorrow and if correctly typed, will agree with the stockyards records.

The "throw out" schedule.

Now with respect to the compilation entitled "Report Supplementary to Audit for Rate Making, December 31, 1934," this is the summary made from Government Exhibit 38 and covers the adjustment for rate making purposes of the net income over

rans.

the five year period. I prepared this report and to the best of my knowledge and belief, it is correct. There is a second compilation marked "Report on Working Capital Requirements," which I prepared 669 and which is also correct to the best of my knowledge.

MR. MILES: Now I would like to show on the record that there was a delay in the preparation of these two volumes. I handed them to Captain Bosworth only yesterday, did the best I could, but I realize that is not satisfactory.

Government Exhibit 41, being the report supplementary to audit for rate making, just referred to, and Government Exhibit 42, being a report on working capital requirements, were thereupon offered in evidence.

MR. BOSWORTH: We do not question the accuracy of these figures but we do object to the exhibit from the standpoint of the theory on which it is based and the conclusions reached therein. So far as the compilation goes, we have no objection to the introduction of Exhibit 41. As to Exhibit 42, I think the same thing is true except that I would want to check somewhat the accuracy of the figures as to the supplies and inventories against the other volume and against our records.

MR. MILES: Certainly, that is reasonable in view of the delay in handing these volumes to respondent's counsel.

Government Exhibits 41 and 42 were thereupon received in evidence.

(Witness continuing). The first column of Exhibit 41 entitled "Gross Income Per Audit" is taken from Government Exhibit 38. By that title we mean the gross income arrived at as the result of our audit.

670 In arriving at that figure there would be no elimina-

Trans.

tions other than those which have been testified to, adjustments between years, etc., and the third subject "Adjusted Total Income" is the gross income per audit less eliminations. That same method was used right through the compilation and also with respect to expenses.

In the third group I have recomputed the Federal taxes on the adjusted income. On the second page of Government Exhibit 41 appears the heading "Income Eliminations." The first item thereon is yardage on drought receipts, that is, yardage received by the Stock Yard Company as the result
671 of the drought cattle arriving at Denver. I eliminated that item because it was an abnormal income to the Stock Yard Company due to the receipt of Government cattle. For the same reason I eliminated the income relating to hay sales, corn, loading and unloading and weighing of drought cattle. To counter-balance this elimination of income I eliminated the expense items referable to Government cattle. There were also the following items: Income from railroad tracks, feed lot rentals, stadium livestock show rent and miscellaneous stadium rentals. I eliminated both the income and the expenses referable to these items on the ground that they were
672 not used and useful property.

I eliminated interest on investments made by the Stock Yard Company for the reason that the current assets are eliminated from the balance sheet and the working capital substituted therefor, and of course the income received from the investments would also be eliminated. This applies to dividends
673 also. The horse and mule division and stock show property were eliminated on account of not being used and useful property per Mr. Christensen's report. Miscellaneous income facilities at the stock show for feeding were also eliminated for the same reason.

Christensen's
schedule of
used and
useful prop-
erty adopted
by Govt.
auditor.

Trans.

There is also the item for branding and dehorning, and miscellaneous yard revenue which was eliminated for the same reason that the income and expenses on drought cattle were eliminated.

675 Under the caption "Insurance" appear five items which were eliminated on account of not being used and useful property as per Mr. Christensen's report. There is also the item "Federal Tax on Bonds" which covers the federal tax on bonds of The Denver Union Stock Yard Company. This item was eliminated because the interest on bonds and bond discount was eliminated. I am referring to the bonds issued by the stockyards. There also appear certain real estate and property tax eliminations, eliminated for the reason that they were on property not used and useful as per Mr. Christensen's report. The elimination "Depreciation Per Books" was made because an adjustment was made in this expense and appears at the lower section of the page. "Interest Miscellaneous" was eliminated because it is a premium on the purchase of securities, or accrued interest on the purchase of securities, and the income interest was eliminated, and this expense is in connection with the income interest, hence the interest

676 was eliminated. "Bond Discount and Expense" is in connection with raising capital and of course was eliminated for the same reason as interest on bonds. "Repairs to Railroad Tracks" was eliminated on account of not being used and useful property as per Mr. Christensen's report. "Federal Income Tax By Books" was eliminated and an adjustment made to cover the Federal tax on the adjusted income. "Horse and Mule Division and Stock Show Property" expense was eliminated as not being used and useful property as per Mr. Christensen's report. "Dues, Donations and Subscriptions" were eliminated wherever I could not see there was any benefit to the patrons of the market. The details of this ap- Railroad
Trackage
Repairs
eliminated.
Dues,
Donations.

Trans.

10-year amortization of I. C. C. expense.

P & S expense eliminated.

pear on pages 4, 5, 6 and 7 of Government Exhibit 41. "Cleaning Expense account of Stock Show" was eliminated as not being used and useful expense.

- 677 "Physical Agents, Registrar and Trustee" expense is in connection with the raising of capital and is taken care of in the return. As to "Rate Hearing, I. C. C." expense, I eliminated 50% of that and spread it over a 10 year period instead of charging it all out over a 5 year period. I did that because in my judgment 10 years was a fair basis for the spread of this expense. It is a large expense and should be prorated over a long period, and 10 years is not unreasonable. That is so since the effect of these rates as established in rate hearings carry forward over an indefinite period. If we allowed them the full \$19,000 at once it would be the same as allowing them \$19,000 for each and every year thereafter.
- 678 The next item covers "Rates and Charges P & S" in the amount of \$43,934.48, which was prorated over a 5 years' period. I eliminated that entire amount because it was not, in my opinion, a charge against earnings. Of that \$43,000 the stockyard records set up \$9,000 in 1932 and \$6,000 plus in 1933 and 1934. I did not amortize this expense because it is an extraordinary amount and an extraordinary amount in my opinion should not be charged against current operations. It is not, in my opinion, a recurring expense. In my opinion it should not go against earnings. If it were to be charged any place it would go against surplus amortized over some ten or fifteen years, but I did not charge it against surplus in that way. I eliminated it completely. The item "Less Adjustments Depreciation Expense Rate Hearing I. C. C." is the amount of the depreciation expense account of used and useful property that I have determined from my conclusions. I have eliminated the not used and useful, and the balance 681 amounts to \$33,200 a year.

ans.

Referring to the page headed "Dues, Donations and Subscription Expense," I have set this page up in two columns. In the first column is shown the expense and in the second column is shown the amount allowed out of total expense; in other words, the difference between the two columns is the disallowance. Wherever I could not see that the patrons were receiving any benefit I disallowed the amount.

Dues, Donations & Subscription expense.

MR. BOSWORTH: Now, Mr. Examiner, if that is the witness' only basis we object to the testimony and ask that it be stricken on the ground that this matter has already been decided by the U. S. District Court of the District of Colorado in the case entitled "Denver Union Stock Yard vs. the U. S. and the Secretary of Agriculture," being the decision of this Court in the 1930 hearing in which it was held in effect that that was not the basis to follow and merely a question of whether there is a reasonable or an unreasonable expenditure as to amounts. We therefore object to this testimony upon the basis that the witness has indicated.

Objection of Respondent re testimony on Dues & Donations.

THE EXAMINER: Objection overruled.

(Witness continuing). In addition to considering whether or not the expenditure was a benefit to the stockyards patrons, I considered the size of the expenditure. There are various contributions listed to organizations like the Denver Community Chest, the Chamber of Commerce and the Volunteers of America. I know their functions in a general way. I disallowed the donation to the Denver Community Chest because all the shippers or patrons whom you might say would be living in Fort Collins might have a community chest fund of their own, and if they have to support the one at Denver and the one at Fort Collins, they are paying in two places, and in my opinion this is a charge to be paid

Trans.

by the stockholders and not the patrons of the market. In a general way the same theory accounts for all the rest of the eliminations.

Referring back to Government Exhibit 42, which is entitled "Report of Working Capital Requirements," on the first page appears the caption "Working Capital," and under that, "Inventories." Hay is inventoried at \$52,000. By that I mean that the amount of hay inventoried for working capital has 685 been allowed in the amount of \$52,000. Over the last five years the Denver Stock Yard has purchased approximately \$13,000 worth of hay per month. That is shown on the second page headed "Purchase Supplies and Feed Turnover." The next to the last page has the caption "Working Capital, Cash Requirements Not Elsewhere Provided." That is the total expense as shown by Government Exhibit 38, and from that I have deducted the cost of sales, of hay and grain and bedding, depreciation, interest on bonds, bond discount, rental of offices, insurance and gross payrolls. The reasons these deductions are made is because they are taken care of in other places and provided in the working capital total and included in the provisions for working capital total. The last page is entitled "Gross Payroll." It is the gross payroll of The Denver Union Stock Yard Company for each year from 1930 to 1934, inclusive. I have reduced that to a weekly basis amount to \$3,926.05 per week.

Referring back to Government Exhibit 41 following the caption "Dues, Donations and Subscription Expenses" is the caption "Summary of Gross Retirements." That is the detail of gross retirements and replacements as shown in the asset account of The Denver Union Stock Yard Company from 1912 to 1934, inclusive. The book cost of all retirements over this period amounts to \$139,065.11. By retire-

ans.

ment I mean where the property has actually been taken out of use.

88 For example, take the first item which happens to be marked 1912, under building and improvement account \$82.31. That means that in 1912 that amount in the asset account was retired.

The material on the next page is a summary of retirements charged to depreciation reserve from 1916 to 1934, that is to say the property which was actually taken out of use and charged to property depreciation account. The totals of that can be found in Government Exhibit 38.

The next page is called "Summary of Depreciation Reserve and Retirement as per Books." That covers the period from 1917 to 1934, and is separated between building and improvements and equipment. It also shows the total reserve and retirements charged against the reserve. Also the net balance per audit, which is Government Exhibit 38 as of December 31, 1934. All of these figures are taken from Government Exhibit 38. The last item states that the net amount remaining in the depreciation reserve as of December 31, 1934, is \$918,018.06.

The next page covers the "Summary of Retirements and Replacements" of property charged or credited to the surplus on which depreciation allowance has been made from 1923 to 1934, inclusive. That is to say, that where an asset is retired or traded off or sold, and there is either a gain or a loss, this statement shows the net between the loss and gain for a twelve-year period.

The next page is simply my summary of repairs as taken from the books and the next page is Mr. Christensen's report of the property not used and useful. I used this sheet to determine the amount for not used and useful property in calculating the Christensen's Used and Useful Property Schedule adopted.

Trans.

Sinking fund
basis of
Depreciation
Reserve.

taxes to be eliminated, and in calculating depreciation.

The next page, with the exception of the last column, is taken from certain exhibits already in the record. The last column is my own computation of a 5% semi-annual sinking fund.

Two or three pages later is the schedule of "depreciation eliminations." That shows the value set up by the engineers' report plus the overheads upon which I have computed the depreciation upon the 5% semi-annual basis to be deducted from the computation appearing on page 17. In other words, the figures on page 18 support the deductions as shown on page 17. Of course the basis for the not used and useful property is taken from page 13, that is to say, on Mr. Christensen's report.

The next page is entitled "Comparison of Book Cost of Reproduction New, Government Engineer." For example, there I have given the new Exchange Building a book cost of \$158,700 as of the date of construction. Those figures were taken from the records of the Stockyards and is approximately the cost as nearly as I could determine from the records. The reproduction new column was taken from Mr. Zelinski's report.

The last typewritten page is marked "Comparison of Straight Line and Sinking Fund Method of Depreciation." There I have illustrated the difference in effect between the sinking fund and straight line methods of depreciation applied to a \$100,000 book value structure.

On page 18 I used 5% against the reproduction new value to determine what the amount of depreciation would be if the sinking fund method were used. This is computed on a semi-annual 5% basis. This figure does not represent the actual physical

rans.

depreciation of the property but the depreciation if computed on the sinking fund method.

693 On page 3 will be found the amount of depreciation to be allowed annually on the used and useful property set at \$33,200. It is the third to the last item on that page. That figure represents the allowance for depreciation to replace the property at the end of its used and useful life.

I arrived at that figure after giving consideration to a number of things. I used the engineers' report, considered the age of the property, book values of various structures, the amount of observed depreciation as allowed by the engineers, condition per cent of the property, and perhaps some others that I don't recall.

The witness then read into the record the following statement setting forth his view as to the depreciation reserve account:

695 "Depreciation being a very complicated subject, naturally it is difficult to define. It is sometimes explained as the 'exhaustion of capacity for service,' 'lessening in worth of physical property,' 'loss in value,' etc.

Statement of
Govt. witness
re deprecia-
tion.

"The general subject of depreciation may be divided into two sections, i.e. the actual which accrues in the physical asset itself and the provision which the company makes on its books for the replacement of the asset when it has reached the end of its service life.

"Actual depreciation is a result of rust, rot, wear, tear, decay, inadequacy and obsolescence. It accrues in the asset until it reaches 100% and the asset is retired. We may say that actual depreciation is related to repairs and replacements and in some instances the life of an asset may be extended indefinitely by repairs and replacements. Actual ac-

Trans.

crued depreciation can be determined by observation if an individual is qualified for this type of work. Of course, when an asset has depreciated 100%, a person with any degree of intelligence would recognize it.

"Mr. Zelinski, the Government engineer, made an appraisal of the buildings and structures of The Denver Union Stock Yard Company as of January 1, 1935, which shows that the observed depreciation of the property inventoried amounted to \$586,622.

696. "The second section of the general subject of depreciation has to do with the provision which the management of the company makes on its books to provide for the replacement of the assets or to reimburse the stockholders when the assets have become fully depreciated. The problem with which we are confronted, is to determine the amount that is reasonably necessary to be allowed the company annually as an expense so that it may replace its structural assets as they reach the end of their service life. In arriving at the amount to be allowed the company as an expense against earnings, careful consideration has been given to a number of factors.

"As stated above, the observed depreciation determined by inspection by the Government engineer amounts to \$586,000.

"I would like to mention here the condition per cent of The Denver Union Stock Yard Company property as determined by the various engineers. Mr. Hyder of the American Appraisal Company found the condition per cent in 1930 to be 95%, Mr. Henrici for the Government in 1930, 84%—Mr. Hyder in 1934 approximately 89% and Mr. Zelinski in 1934 80.5.

"Gross retirements of depreciation property as disclosed by Government Exhibit 41, page 8, amounted

ans.

to \$139,065.11 from 1912 to 1934, inclusive, or an annual average of \$6,046.11 for all of the property over a period of 23 years. Included in the total of \$139,065.11 is an amount of \$35,000 for partial retirement of old Exchange Building and approximately \$20,000 for dismantling to make way for construction of new sheep and hog barn. In my opinion the observed accrued depreciation existing in the structural assets plus the retirements which in this instance cover a period of 23 years, should be given substantial weight in determining the amount necessary for this company as a reserve for depreciation.

97. "In this connection let us give consideration to what is shown on the books of the company in respect to the depreciation reserve account. It has been the policy of the company to set aside an amount for depreciation reserve based upon the straight line method. The rate has been determined by the life expectancy of the various structures and applied to the book values to determine the amount of depreciation to be set up annually. For example, if an asset had a book value of \$100,000 and an estimated life of 25 years, a rate of 4% would be applied to the \$100,000 and \$4,000 would be set aside annually for depreciation. On this basis the company has accrued on its books an amount of \$918,018.06. Comparing this with the observed depreciation determined by the Government engineer it appears that this observed depreciation is only \$586,622, or 64% of the amount which the company has set on its books. It is therefore apparent that the provision which the company is now making for depreciation is greatly in excess of the actual accrued depreciation. While it may not be expected that the depreciation a company sets up on its books will exactly coincide with actual depreciation as it accrues, it is obvious that in this instance where the deprecia-

Trans.

tion set up on the books is 56% in excess of the actual accrued depreciation as determined by the engineers, the provisions made by the company are far in excess of any reasonable requirements.

- 698 "Further illustrations of the effect of the present policy of the company in setting up depreciation with respect to various structures is disclosed by the audit and other historical data that I have been able to obtain.

"The Stadium building was constructed in 1908, or 27 years ago and depreciation is being charged against earnings at the rate of 3% annually. In other words, the company believed it had an expected life of 33-1/3 years and is now about 5/7 depreciated. According to the Government engineer it has a condition per cent of 79 and a reproduction new value of approximately \$211,000 including overheads as of January 1, 1935. Another example is the old Exchange Building constructed in 1898, or 37 years ago. On the same basis this building has a condition per cent of 76 and a cost of reproduction new value of approximately \$120,000. It is, according to the books, accruing depreciation at the rate of 3% annually. Using the straight line method over the life of the building to date, there would be accrued depreciation of 111% of the cost of reproduction new. In other words, the company would have a building constructed 37 years ago, possessing a present cost of approximately \$120,000, reproduction new less depreciation of approximately \$91,000, an amount in the depreciation reserve fund of \$72,000, and in addition, the interest on the money in the reserve which has been in excess of proper charges to the reserve. Other buildings and their respective dates of construction, are as follows:
New Exchange Building 1917, New Hay Barn #3

Trans.

1908, Hay Barn #5, 1917, Chute House, 1919, Club

699 Building 1911 and Blacksmith Shop, 1911.

"I have previously referred to the straight line method of setting up depreciation. The application of the use of this method is set out on the last page of Government Exhibit 41, which is the supplement to the audit. While the straight line method is commonly used by accountants in setting aside depreciation on the books of corporations, I have given it relatively little weight in determining the amount of depreciation to be allowed annually as an expense to this company for the reason that the company receives interest on the installments which under the straight line method is ignored.

Straight line depreciation
not considered

"The use of the sinking fund method is also illustrated on the last page of Government Exhibit 41. The theory of the sinking fund method is that an amount should be set aside annually upon which interest is accrued, which at the end of the composite life of the structural assets will produce a sum equivalent to the base cost of those assets.

Sinking Fund
method of
depreciation.

"As a test of the amount which would be reasonable to be allowed the company as an annual charge to expense for depreciation, I have made a computation using the sinking fund method. Interest has been compounded at 5% semi-annually. It will be noted as shown on page 17 of Government Exhibit 41 that an amount of \$42,558 set aside annually during the composite life of the property as determined by Mr. Zelinski will produce the cost of production new.

"Mr. Zelinski has determined the observed depreciation on all the property as of January 1, 1935, to be \$587,000 in round figures. Incidentally the cost of certain major structures as reflected in the 700 plant account of the company amounts to approximately \$668,200, whereas the cost of reproduction

Trans.

new of those same structures as determined by Mr. Zelinski is approximately \$1,040,000 as shown on page 19 of Government Exhibit 41. In other words, the cost of reproduction new of these structures as determined by the engineer is 55% greater than the actual cost as reflected by the books. ▶

"A study of the plant account is shown in the audit report which is Government Exhibit 38 and discloses that the cost of construction since August 1, 1912, is approximately \$1,285,000. This covers construction during the past 23 years. Giving consideration of the ratio between the book cost and the cost of reproduction new and also to the amount of construction since 1912 as reflected by the plant account, it appears that at least 1/3 of the structural property has been in existence for more than 23 years. As previously stated some structures have been in existence for at least 37 years. From the basis of all the information I have been able to obtain, it is my opinion that the average age of respondent's structures is at least 20 years. Therefore on the straight line basis, the existing depreciation has accrued at the rate of approximately \$29,300 per year. Had provision for this depreciation been set up on the sinking fund method it would have required an annual amount of \$17,406 had interest been accrued at the rate of 5% compounded semi-annually.

"The retirements, details of which will be found on page 8 of Government Exhibit 41 have amounted to approximately \$6,000 annually. If the straight line method had been used, \$35,300 annually would have been required to provide for observed depreciation and retirements. If the sinking fund method had been used \$23,406.00 would have been required.

701 "In addition to the observable depreciation determined by the engineers in which consideration

Trans.

has been given to obsolescence, the company may have unobservable obsolescence not reflected in the accrued depreciation determined by the engineers. Such obsolescence may be illustrated by improvements or remodeling made necessary as a result of livestock arriving in trucks rather than by rail. Furthermore, the retirement history of the company covers a period of 19 years. It may be that over a longer period some retirement of major structures may occur that would somewhat increase the yearly average of retirements. These two factors should be given consideration in determining the annual amount necessary for depreciation expense.

"After giving careful consideration to all of the above factors and giving to each such weight as in my opinion is proper, and also giving consideration to all the information that I have been able to obtain which in my opinion has any bearing on the amount necessary to provide for depreciation, it is my conclusion that an amount of \$40,000 is sufficient for the company to set aside annually as a depreciation reserve to provide for retirements and replacements and, in addition to this amount, the company should be allowed an amount of approximately \$18,000 per year for repair expenses. This latter amount is substantially equivalent to the average amount expended by the company annually during the past 17 years as per page 12, Government Exhibit 41."

Govt. witness' conclusion re depreciation.

702 (Witness continuing). My recommendation is a depreciation allowance of \$40,000 for both used and useful and not used and useful property. On page 3 the figure \$33,200 appears which is my depreciation figure applicable to the used and useful property only, eliminating that which is not used and useful as based upon Mr. Christensen's report. If the Secretary should accept his report in part and reject his report in part, then the depreciation reserve found would have to be recomputed.

Trans.

Yes, I made an investigation to determine how the depreciation reserve fund of the respondent was actually invested. I found that as of December 31, 1934, 28% of the depreciation reserve was invested in securities and the remaining 72% was invested in the plant and hence that 72% would be earning whatever the stockyards earned.

704

Cross examination.

Yes, we adjusted the company's balance sheet as received from the company, placing certain expenditures in one year, although they appear on the company's books in another year. These changes are not summarized except on page 9 of the audit, Government Exhibit 38. The transfer of these individual items between years is in these figures, the reason being to show the amount of net income applicable to that year. For example, on page 9, the item of taxes in 1933 may have been up or down on the books from what it should have been and we adjusted it so that it is buried in the amount of \$10,781.10 and the working papers show exactly the amount in items between our figures and the book 705 figures in a summarized form. For example, the net profit per book in 1934 amounted to \$288,040.86, while the net profit per audit amounted to \$287,595.47. We added \$1,873.83 to the book figures and deducted \$2,319.21. The item of \$1,873.83 is made up of 15 items, which are adjusted between the years. We eliminated losses and gains on capital assets from the income account and picked them up 706 in the surplus account. The item of rent, A. H. Langman, February 1934, in the amount of \$40 is in the stockyard profit and loss amount for the month of February, but \$40 of that we eliminated from the 1934 profit and loss and included in the 1933. It consists of a cancellation in February of \$10.00 a month for six months. It is as though a

rans.

lessee was delinquent for six months and reached a settlement on a basis of \$10.00 less a month, so we deducted an item of \$40.00 from 1934, and included it in 1933, although the settlement was made in 1934.

07 The loss on saddle horse shed of \$339.50, which we charged back from 1933 to 1934. These additions to surplus are shown in the audit report on pages 7 and 8. We charged them into surplus because it is a loss on capital assets not pertinent to current operations of the stockyards. Under my system the company does not get back those losses in depreciation reserve, nor under obsolescence; they are an absolute loss on capital assets not deductible from 08 operations. Yes, it is my understanding that when, in the management of a business it becomes necessary Surplus must or advisable to part with a capital asset which has absorb losses. not been fully depreciated, the stockholders have to take that entire loss, but the accumulation in the surplus account takes care of that.

Q. Well, now, that could only be so if we If earnings are earning more than a fair return upon our property and didn't pay it out in dividends, isn't that a fact?

A. I think the fair return takes care of that, Mr. Bosworth.

Q. Well, now please answer my question. I said that this only occurs where we have accumulated a surplus either by an amount over a fair return or have failed to declare out our return fully in dividends, if we declared out our return fully in dividends, there wouldn't be any surplus, would there?

A. There wouldn't under that assumption, no.

Q. And it is your understanding that a fair return includes a profit to the company over

Trans.

710

**Must be a
"cushion"
allowed in
the rate.**

**Effect of
fire risks
on depre-
ciation.**

**Straight line
method covers
risks.**

and above the amount necessary to sustain the stock structure at current market, or at an amount, I should put it this way, at an amount such as to interest capital in the business?

A. My understanding of that is this, that the allowance for risk in the rate of return takes care of such items as that.

Q. Well, do you think the element of risk --

A. In other words, Mr. Bosworth, the cushion in the return will take care of just such losses as we have been talking about.

Q. Then you feel that a rate of return must have a cushion in it over and above the amount necessary to maintain your bonds, your stock and your capital structure at par?

A. Yes, there must be some allowance there.

711 (Witness continuing). Yes, there may be some instances of obsolescence in that, but not all of them are due to obsolescence: There may be an obsolescence feature but where there is a direct loss, I don't think the question of depreciation would enter into it. If you take the example of a fire where the insurance, which was believed to be adequate, proved inadequate and there is a \$15,000 loss. If the asset had been in existence such a short time, the depreciation reserve would be insufficient to take care of the loss and it would have to be charged 712 against surplus.

Q. Isn't that one of the reasons why straight line depreciation has been certainly the accepted principle, namely that it recognizes that it does build up more rapidly, and a greater amount than is perhaps necessary but that excess is due to the hazards inherent in the business which cannot be accurately forecast; isn't that the theory of straight line?

ans.

A. That might be in a commercial organization.

MR. BOSWORTH: (continuing) Well, wherein do we differ from a commercial organization?

A. You mean between the commercial organization theory of depreciation and the sinking fund?

Q. You said that might be true in a commercial organization. Wherein do we differ from a commercial organization?

A. Well, I was speaking thereof the practice as used by any commercial organization, under your assumption.

Q. Well, do you feel that that is an improper method in commercial organization?

A. Not if they want to use it, no, sir.

Q. Well, why do you feel it is improper then with regard to the stockyards company?

Govt. Witness
approves
straight line
method.

A. I don't think it is if they want to use it.

Q. Well, certainly —

A. In other words I am not trying to find any fault with the straight line depreciation so far as the stockyards company is concerned.

Q. Except that you say it shouldn't be allowed and charged to the rate payer. Isn't that in effect what you say?

A. I don't think I have said that.

14 (Witness continuing). The fact that Mr. Zelinski (the Government engineer) found straight line depreciation to be ninety-five thousand some odd dollars annually while I recommend approximately

Trans.

\$40,000, is no criticism of the straight line method, but it is just not my method of figuring depreciation to be allowed in arriving at the amount to be incorporated in the earnings against a rate base.

Returning to Government Exhibit 38, yes, under the item of losses I have a Remington typewriter at \$17.50, and the loss is on the theory that it is a capital asset and it is assuming that a portion of it might not have been depreciated. I don't recall the circumstances. Yes, capital assets are assets that
715 are generally speaking subject to depreciation. An automobile has from 25 to 33-1/3% annual depreciation. It is the function of the depreciation reserve
716 to take the proportion of the asset undepreciated when the asset has been disposed of. In other words, if an automobile with a five year life was disposed of in four years, we wouldn't credit the asset account with the full amount of the cost of the automobile and charge the depreciation with the unexpired portion and charge the surplus for the loss. On a five year basis a thousand dollar automobile would have two hundred dollars per year depreciation reserve on the straight line basis and in four years that reserve would amount to two hundred dollars. If the automobile was then sold for two hundred dollars it would wash out the transaction, but if it were sold for three hundred dollars, there would be credited in the surplus account the difference. The one hundred dollars would not go to profit. If it were sold for one hundred dollars the
719 loss would go into the surplus account. We would charge the depreciation reserve with \$800.00 and surplus with \$200.00 and credit assets with \$1,000. No, when the saddle horse shed or the car or whatever it might be as shown on the list had been disposed of, there would not be any more depreciation to be taken and no further additions to the depreciation reserve on account of those items. The item

rans.

of \$30,793.88 for feed and yardage transferred to operations and eliminated from 1931 figures, is not spread over the years because the company took that into its earnings later on. That is why it is eliminated from my statement here. The difference of the whole period is for the year 1934. 1934 is all I am using or need in the reconcilement.

Referring to Government Exhibit 41, page 2, income elimination, horse and mule division, the details of those eliminations appears in Government Exhibit 38, page 109, and 110. Yes, the eliminations were made because of Mr. Christensen's recommendation. Discussion occurred as to whether or not Mr. Christensen had recommended the elimination of the horse and mule division, or limited his recommendation solely to the stock show property. It was agreed between counsel that the recommendation was as to the stock show property only, and witness agreed to prepare a new exhibit showing correction.

(Witness continuing). Government Exhibit 41-A was offered and received in evidence, the same being an exhibit showing the corrections as witness understood them.

(Witness continuing). The changes which I have made in Government Exhibit 41-A from Government Exhibit 41 are that I have eliminated the income and expense covering loading and unloading and added back to our adjusted income, as shown on Government Exhibit 41, the income and expense covering the Colorado Horse & Mule Company barn, or barns on Lafayette Street, as well as the barns used by the horse and mule division on the so-called stock show property. To the best of my knowledge it eliminates the income from the stadium property, if any, and from the stadium itself, the hook-up shed and those purely stock show buildings according to Mr. Christensen's view, and also the club building.

Trans.

Exhibit 41 contains four pages. Page No. 1 is the profit and loss statement; Page 2 is the income elimination; Page 3, expense elimination and Page 4 is headed "Basis for restoring the income and expense which is eliminated in Government Exhibit No. 41." Yes in eliminating income I have also eliminated expense. My method was to take the cost of reproduction new of the horse and mule facilities on which income had been eliminated in error

728 on Government Exhibit 41 and in doing so I arrived at a per cent of 45 which I used against the horse and mule division and stock show property expense

729 for each year 1930 to 1934 inclusive. Yes, if any of those items on the first tabulation on page 4 which are not included in the second tabulation are found to be used and useful, it would change the per cent. No, I do not know whether the bulk of the expense was in connection with the horse and mule division, and very little perhaps with the property eliminated. My figure is based upon a percentage of the reproduction new value. We attempted to analyze the repair account from the records of the stockyards company but found it was impossible. Yes, the records show the expense of repairs on a building, but to analyze the repairs from the records completely, I found was impossible.

730 Q. Could you use or give some weight to the use of the different buildings as to their likelihood, based on use, to cause expense?

A. That might enter into it, but I know of no way that you could use service in determining the cost of repairs. I would say that is a physical impossibility.

731 Q. But doesn't it stand to reason, Mr. Buffkin, that a property which is composed very largely of wood, so far as the interior is concerned, at least, stalls and so forth, occupied 50

rans.

to 51 weeks in the year, would cause more expense than a concrete steel-girdered structure used at a maximum two weeks during the year?

A. You are comparing the use of the stalls against the maintenance of the building, is that it?

Q. The maintenance of the whole structure?

A. You mentioned stalls.

Q. I certainly did.

A. In the use of the stalls, of course, there would be a good deal of wear and tear and I don't see where that would effect the building itself, though.

732 MR. BOSWORTH: (Continuing) Well, doesn't the expense on the upkeep of the stalls in the building figure in this expense restoration?

A. Yes, but not to such an extent as the cost of the building.

Q. Well, now, how far are you going to carry that? Take your doors that go into the building, opened constantly, bumped against by live-stock, wagons and so forth, don't they have a greater tendency to wear than we will say the stadium doors, for example?

A. Oh, yes, I admit that the doors and stalls themselves if of wooden construction would wear quite rapidly perhaps, but when you take the small proportion that the stalls and managers are in proportion to the cost of the entire structure, I would say that it would be very small.

Q. Yes, we are not dealing here with depreciation, Mr. Bufkin, we are dealing here with expense items.

Trans.

A. Maintenance.

Q. Maintenance items?

A. Correct.

Q. Well, now, isn't it your experience, or have you had any experience in stockyard operation, let us ask that question first?

A. Not operating a stockyard.

(Witness continuing). Maintenance items consist of material, labor and supplies to maintain the property. Yes, material, labor and supplies that go into stalls, doors, in a constantly used building are what lead to the expense items.

Take Barn No. 3, described as unit Y-8 on page 4. Yes, I know what that structure is, it is a one-story wooden-constructed building. The Government engineer tells me it is a three-story brick building. I had forgotten which building it was. I don't know whether each of those floors are occupied or not. If it is occupied the cost of maintaining a three-story barn fully occupied would be greater than the maintenance of a one-story barn. No, my computation does not take into account the service use of the building at all.

**Income from
Stock Show
sales of
livestock in
yards not
eliminated.**

734. No, my elimination of income does not eliminate any of the incomes due to stock show sales of livestock at the yards, nor any of the expense incident to such sales. That would be impossible from my viewpoint.

Q. And as an accounting proposition were the respondents able to prove income in the yards due to the stock show, that should be eliminated should it not, assuming that we can prove that?

A. Well, a lot depends on that, I would say,

Trans.

as to whether or not the livestock would have arrived at this market regardless of the stock show.

Q. Well, now, you are begging the question. I am asking you to assume that we can prove that fact of income due to the stock show and traceable to the stock show as an accounting proposition, should that also not be eliminated?

A. Under your assumption if the stock show property is eliminated, I would say that that income should be eliminated, provided of course that your computations would show that the expense and income was due to the receipts in the yards account of the stock show.

The loading and unloading income which I have eliminated in Government Exhibit 41-A is that portion of said income which is due to the drought as specified on page 2 of Government Exhibit 41.

The "throw out" schedule.

Referring to what you call the throw-out schedule on Government Exhibit 41, that is the so-called dues, donation and subscription expense; yes, so far as I know the Denver Community Chest is a local charitable organization covering practically all of the charities in Denver. Yes, it is a community endeavor. As far as the patrons of the market are concerned, I would not think that the prosperity of the market is tied in to any appreciable extent to the community in which it is located. I think The Denver Union Stock Yard should stand some portion of that expense. In other words, The Denver Union Stock Yard could hardly ignore the Denver Community Chest.

Dues and donations.

Memberships
in Chambers
of Commerce.

Yes, the Denver Chamber of Commerce is a local organization in the community, largely devoted to business and the United States Chamber of Commerce is a similar organization, nation-wide. Also

Trans.

the Junior Chamber of Commerce. No, I did not know that the Denver Chamber of Commerce for years has maintained a livestock committee who does not limit its activities solely to Denver. I did not know that the Junior Chamber of Commerce has or has not interested itself in the livestock industry

740 from the standpoint of statewide prosperity. No, I have not heard anything since I have been in Denver of the so-called trade trip into all sections of the State by the Chamber of Commerce and the Junior Chamber of Commerce. Yes, I think the Junior Chamber of Commerce is composed of junior executives.

As to items tickets and boxes at the stock show, averaging perhaps \$395 or \$400, for the five year period, I don't know how those tickets are used or why. I have a notation that these tickets covered donations on account of the stock show and I presume they mean donations of tickets on account of the stock show. I don't know what becomes of the tickets, or whether they go to patrons of the yard who come and request them while at Denver with shipments.

American
Stockyards
Assn.

741 The American Stock Yards Association started in the year 1933, because I find no reference to it prior to that time. Yes, I found that the organization was created because it was believed to be necessary by the late NRA, and the reason that that item of expense was eliminated was because I did not consider it a recurring expense, and if we should allow it, it would be the same as allowing it for all

742 the years to come. If it is an organization like a chamber of commerce or stockyards, whether or not I would allow the expense would depend, I believe, on whether or not the organization continued. I understand its Washington office has been closed. No I wouldn't say that no organization is existing

Trans.

743 unless it has a Washington office. My understanding is that this organization is not in existence. If it be in existence, whether or not I would allow the expense would depend upon whether it can be proven that there is a benefit to the patrons of the market. Yes, I take the position that an organization beneficial to the industry as such may not be a benefit to the patrons, because it might be an organization that is a benefit to the stockyards but not a benefit to the patron as far as the expense is concerned. Yes, I would eliminate it on the same basis as I have eliminated the expense for the Denver Chamber of Commerce.

744 Yes, I inquired about the item of church donations and was informed by Mr. Shoemaker (the President of the Stock Yard Company) that it covered donations to churches in the vicinity of the stockyards. Yes, it was mentioned in our conversation that those churches are attended in a large part by yards employees or that they exercise a moral influence in the little community out by the yards. Yes, I think the welfare of the employees is some concern of the patron, but just how much I cannot separate it in the case of donations to churches and welfare organizations.

Patron is
concerned
with welfare
of stockyards
employees.

Q. Well, your Community Chest maintains charities out at Globeville, Elyria and through there, does it not?

A. Well, there might be a different proposition where the welfare is a welfare organization.

745 (Witness continuing). Yes, a church is a welfare organization, but a welfare organization in Denver being supported by the Stock Yard Company in comparison to a similar organization being supported at Fort Collins, is two different things so

Trans.

far as the patron of the market is concerned, because in this instance the Stock Yard Company, in my opinion, is an agent of a patron for the welfare organization. The patron would have to pay in his own town and also pay through the rates at Denver, that is my position.

Q. Well, now, did you make any investigation checking up on Mr. Shoemaker's statements or are you willing to accept his statement that these church donations were made solely to churches in and around the stockyard area?

* Admits lack
of knowledge.

A. Oh, I didn't discredit Mr. Shoemaker's statements, but the question is as to how much was on account of the stockyard employees. I would assume a very small proportion, however, I know nothing about it.

The United Appeal was something similar to the Community Chest relating to Jewish charities. I don't know whether you have Jewish employes on 746 your payroll or not. Yes, the Volunteers of America is a community effort.

As to the Firemen's Protective Association and the Policemen's Protective Association, my position is that they are officers and an officer is supposed to do his duty regardless of the gratuity. Yes, so far as I know these associations are protective organizations for these men, but I would not say that they had any effect on the question of fire and police protection at the yards if the officers are doing their duty.

Traffic club
dues excluded.

I don't recall now the exact circumstances in regard to Denver Traffic Club and Commercial Traffic Club. Their name implies that they have to do with traffic, but I don't know whether that means 747

Trans.

rail traffic, automobile traffic or any other form of traffic.

I don't know how many brand inspectors there are at the yards. Yes, there are brand inspectors from various states, and their function is to keep a record of branded cattle and to inspect shipments arriving on the market which may have been stolen.

Q. Well, it is simply shipments that may have been stolen, and why is the Stock Yard Company or the stockyard industry interested in brands?

A. Well, I am familiar with that movement, which I know is getting more popular throughout the United States, particularly in the western section,—in order that the ranches or owners of ranches, can identify their cattle when they are being moved to market.

Says brand movement getting more popular.

Q. You say that is getting more popular in the west?

A. So far as I know, yes.

Q. As a matter of fact, hasn't that been since time immemorial the only way that livestock was kept track of, by means of brands, or ear brands, notches?

A. Well, yes, but I mean that the movement is making more headway.

748 (Witness continuing). Yes I know that on branded cattle the reason for the brand inspectors being on the market is to insure proper settlement to the patron who sends his livestock to the market, and this is true of sheep also. So far as I know the item which I have eliminated of expense to the Denver Livestock Exchange may be an assessment and perhaps were dues on the membership. It is an organization of commission men, dealers and mar-

Brand inspection is for benefit of shipper.

Trans.

ket agencies at the Stockyards and they are the 750 people to whom the livestock is sent. Oh, yes, it is an organization which in the very nature of things is rather intimately tied up with the patron and the livestock industry.

Yes, I would take the Y. M. C. A. as a community effort.

I eliminated the item of expense in 1930, 1931 and 1932 for the Christmas party at the Exchange Building, because I did not feel that was a proper expense to be allowed for reason that this party, as I understand it, is a general party for the entire Exchange Building and members of the livestock organizations and their friends in Denver. Even if it were shown that it was a party for the employees of the stockyards and perhaps commission men, there again the question of how much is allocable to the stockyard employees in my opinion is 751 very difficult to determine. No, the fact that some girl employee might want to invite some young man as an escort does not detract from the party as a stockyards activity for its employees.

Q. Did you, as a matter of fact, make any investigation as to the attendance at that party and its makeup?

A. Yes.

Q. Well, what did you find out and from whom?

A. I do not recall who the party was, someone connected with the stockyards company, and as I understand it, it was quite an elaborate party.

Q. For \$24.00 worth, is that it?

(Witness continuing). The item of \$5.00 a year for each five years on the average for the stockyards

Elaborate
party for
\$24.00.

ans.

bowling team and an item of \$7.50 expense to the Greeley Bowling Tournament have been eliminated because I cannot see where the Stock Yard Company would have to make expenditures on behalf of the employees' recreation. I would not consider it proper to install a gymnasium out there for the employees.

- 52 The Old Folks' Home is a community endeavor to which you contributed \$10.00 in 1934 and \$5.00 in two other years.

In 1931 you gave the American Red Cross \$50.00 which I have eliminated. I may not know the nature of that appeal, but regardless of what the organization stands for, the position is the same. I take it that the donation in this case is similar to that of the Community Chest, and again the Stock Yard Company is an agent for the patron in making this donation. That is the reason for its elimination. He may have to make similar donations in his own community, and if through rates he assists the Denver Union Stock Yard in contributing \$50.00 to the American Red Cross, I would say that he has paid more than his share. The resident in Kit Carson, Colorado, who is a patron of the yard, may have some interest in Denver as a community and in the community activity. My same viewpoint would go to the National Jewish Hospital, Little Sisters of the Poor and the Rescue Mission, all of which are community activities and to which there have been small donations made in one year or another.

- 55 I have no notation in regard to the item of \$88.30 covering the dinner for market agencies which expense I have eliminated. However, if it can be shown that it is a benefit to the patrons of the market, it should be included in the expense.

- 55 The donation to the Veterans of Foreign Wars of \$5.00 is excluded on the same basis as the Jewish

Trans.

National Hospital, and the donation to the Rev. Bridwell I accepted as a church donation and threw it out for the same reason as the other donations. The same is true as to the Church Messenger. Yes, I realize it was an advertisement.

Q. And that goes all over the State of Colorado among church people?

A. I don't know where it goes.

Made no
study of
meat
traffic.

Population not
a price
factor.

Veterinary
Congress
excluded.

756 After the contribution of \$100 in 1934 to the Denver Tourist Bureau I would not consider that the patron is interested in bringing to Denver and Colorado tourists. Yes, it may be from a truly selfish standpoint that the consumption of meat in Denver does increase during the tourist season, and I don't know whether that means there is more cattle purchased and slaughtered locally than at other seasons of the year. No, I made no study of the amount of fresh meat which moves out of Denver. The patron may be interested in the Denver Tourist Bureau but I cannot see how that has any bearing upon rates, even though it means, perhaps, more business, and perhaps more inhabitants and resi-

757 dents of the State of Colorado in the long run. I feel that the patron would get just as fair a price for his product at The Denver Union Stock Yard regardless of the size of the city. That is very evident because there are other markets smaller than The Denver Union Stock Yard located in various cities of the United States, and the comparison of sales prices is right in line with those at The Denver Union Stock Yard.

758 I eliminated the expense or donation to the International Veterinary Congress. Yes, in a certain sense it is an organization sponsored by the Department of Agriculture, and so far as I know its chief purpose is the elimination of disease in livestock.

ans.

The donation of \$25.00 to the Police and Sheriff Association is eliminated on the basis that officers do their duty. Yes, I think it was for an advertisement in their journal which goes rather widely through the western states, but I don't see where such advertisement is any benefit because it is in reality a donation. Yes, I allowed the advertisements in the Denver Post and the Denver News because that is the usual channel for advertising. No, I don't know whether the Tax Payers Review has a state-wide circulation. I made no inquiry as to that. Yes, the donation to the letter carriers is on the same basis as the donations to the policemen and firemen. The donation to the Goldman Community Center, the American Legion and the advertisement in the Western Legionnaire and other items are all excluded on the basis I have indicated. No, I do not know what percentage of the membership of the Legionnaires are engaged in the livestock industry who receive that publication. Yes, a good many of them are engaged in the industry. Other items appearing on pages 6 and 7 are eliminated for the various reasons I have already stated. No, I did not know that the Colorado Association, which is an organization to advertise the resources of the State of Colorado does or does not have a livestock committee and a livestock department of that movement. Yes, I think the contribution to the Citizens Employment Committee in 1932 was for relief work limited solely to Denver. Yes, it was occasioned by the crisis due to employment, and I feel that it is an improper expense.

No inquiry
made re
certain
advertising.

No knowledge
re livestock
activities of
Colorado
Assn.

Q. And you eliminated 50 cents we spent to get a copy of a publication called Sixty Years in Cheyenne, in which we had an advertisement, did you? That is on page 6 about ten lines from the bottom.

A. Yes.

Trans.

Total 1934
 Dues, Dona-
 tions, and
 Subscriptions
 $\frac{3}{10}$ of 1%
 of gross
 income.

764

Q. That was issued, was it not, in connection with the annual rodeo up there which is, as a matter of history, an outburst of the livestock industry very largely?

A. I understand it is in connection with the rodeo.

Q. Now, the total of these expenditures in the year 1934, including allowed and disallowed, is \$3,823.84, is that correct?

A. That is correct.

Q. And looking at Government Exhibit 41, page 1, the gross income per audit for the year 1934 was what?

A. For the year of 1934 —

Q. Yes.

A. — is \$1,031,507.96.

Q. Of which figure \$3,823.84 is what percentage, approximately?

THE EXAMINER: When you get to a stopping place, let us adjourn.

MR. BOSWORTH: Just a moment.

THE WITNESS: It is a very small per cent.

MR. BOSWORTH: (Continuing) About one-third or three-tenths of one per cent, is it not?

A. That is about right.

Q. And you have allowed us \$223.25 out of that total which, if your pencil is fine enough, I wish you would tell us the percentage.

A. One-half of one per cent.

Q. Oh, oh! Please figure that again. If your audit is on that basis —

rans.

A. Are you speaking about \$223.25 as compared to — Allows 1/50th of 1%.

Q. The gross for the year, gross income per audit for the year 1934.

A. Oh, I was using the wrong figure.

Q. It is about one-fiftieth of one per cent, is it not?

A. That is right.

66 (Witness continuing). In 1933 with a gross income per audit of \$769,188.88, and total donations of \$3,148.68, a little less than one-half of one per cent of gross income was given as donations, of which I allowed \$248.40. In 1932 there are relatively the same percentages. In 1931 with total donations of \$2,958.04, that was between one-fourth and one-fifth of one per cent of the gross, and of that I allowed \$353.48 for the year. Both percentages hold practically for the year 1930.

67 The proportion of expenses for dues, donations and subscriptions in comparison with the gross income I would say was reasonable so far as the operations of the Stock Yard Company are concerned and the criticism is not in any way directed along that line. The eliminations, of course, were made for the reasons I stated in previous testimony.

68 Yes, the packers and buyers of livestock, as well as the producers of livestock, are patrons of the market.

69 When I testified previously that items of loss like on the Ford car should go against the cushion and the rate, I now think that the proper way that it should have been handled would have been to charge 70 it against the depreciation reserve. In proper accounting they should have been so charged, but in transferring those items on page 9 of Government

Admits amount is reasonable.

Trans.

Exhibit 38 from operations to surplus, they were not charged by us against the reserve, where they should have been charged, and to that extent my analysis of surplus would be changed if I had followed the accounting method. This would apply to all the items on page 9 except the loss on the City of Twin Falls bonds.

773 I eliminated the stock show income and the rail trackage income as I saw it on the basis of Mr. Christensen's report as not used and useful. No, it is not on the basis that it is outside income. I didn't even consider that. I have eliminated these distinctly on Mr. Christensen's report. My basis is simply that Mr. Christensen recommended it and I am following it.

Depreciation Reserve money belongs to Company.

The money represented by the depreciation reserve belongs to the Stock Yard Company. It is a reserve capital account. Yes, any earnings that the company makes on its reserve belongs to the company and would be excluded just the same as earnings on bonds and securities. Yes, the theory of reproduction new value is determining what it would cost to duplicate the present structures. No, a new company starting out would not have any depreciation reserve, but would have a certain useful life of its structures from the outset.

The straight line depreciation method is built on 775 a fixed percentage basis. In other words, if property has a life of 25 years against a valuation of \$100 you would charge out 4% annually or \$4.00 a year on the theory that at the end of that useful life there would be \$100 in principal. The earnings on each installment would also be in that account. Yes, I testified a moment ago that the earnings belonged to the owner of the property, but the depreciation reserve is increased to the extent of the 776 earnings on the installment. Yes, the owner can

Trans.

spend those earnings in any way he sees fit. On the straight line method you have charged off the full value of that property over the full period of its useful life. Yes, it is true that the straight line method as applied in accountancy is based upon the best engineering experience which many years of compilation of figures has given my profession.

Straight line method is based on best engineering and accounting experience.

Yes, in Government Exhibit 28, starting in with page S-10, the second and third column represent Mr. Zelinski's estimate as an engineer of the useful life of the structure and the annual rate per cent of straight line depreciation, and on Page S-16, total depreciation, straight line, is shown as \$95,020. That is the total of the annual allowance that Mr. Zelinski found reasonable and necessary from his engineering experience. Yes, the determination of the useful life is an engineering problem, coupled with general experience.

778 The generally recognized annual rate of depreciation of a Class A fireproof building is 2% a year, based on a useful life of 50 years. Yes, the building might last longer than 50 years, but it is assumed that so far as utility is concerned history shows on the average that obsolescence generally pushes such a structure out at 50 years maximum. If you suppose a million dollar building, Class A, fireproof, the annual depreciation is 2%, or \$20,000.

Effect of straight line method illustrated.

Q. Now let us suppose, as an extreme example, that the owner was willing to let that building run along with just normal maintenance for the 50 years until it was wiped out in that manner, the \$20,000 is certainly his money, isn't it?

A. Yes.

Q. It is a replacement of capital, as a matter of fact isn't it?

Trans.

A. Yes.

Q. The tenants have no ownership or right in that \$20,000, do they?

A. No.

Q. Now, he has an option, hasn't he, as to whether he will put that in his pocket or whether he will utilize it for replacement?

A. He can do whatever he pleases.

Q. Now, if he wanted to be sure of having the million dollars at the end of 50 years, he or his heirs, he would place that money in as safe an investment as he could find, would he not?

A. I suppose he would, yes.

Q. Or having the option, if he wanted to speculate with it, he could buy common stocks or anything he wanted with it, couldn't he?

A. Yes.

Q. Or put it into some other business or some other property?

A. Correct.

Q. Now, if he put any part of that money back into the building by way of replacements, it would still be his money, would it not?

A. Oh, yes, if he —

Q. And any earnings due to that money which he replaced would be his earnings, would it not?

A. Yes, provided he still owned the property, of course.

Q. Of course, and really as a matter of fact, how would those earnings, if put back in the building, be visible or be expressed?

rans.
780

A. Read the question.

Q. Perhaps that is a little blind. I will ask it directly. Isn't it a fact that in such case the earnings derived by him from the replacement, that is, the utilization of this fund in replacement is really expressed in terms of continued life of the building rather than in any additional earnings?

A. In replacements, that is, if he uses it in that sense, yes, it would extend the life of the building in all probability.

Q. And there would be no additional earnings except the maintenance of earnings, isn't that a fact?

A. There would be additional earnings to the extent that the building had outlived its 50 years of life.

Q. Yes, but I am not talking about the end of the 50-year life. I am talking as it runs along, Mr. Bufkin. In other words, isn't this a practical matter the situation: If he didn't put that money into replacements, the building in the normal course of events, in spite of maintenance, would tend to have decreasing earnings?

A. That is correct.

Q. By putting in the replacement, he builds back the earnings to where they were and keeps them at the normal earning life?

A. That is right.

Q. So that the earnings due to the, you might say, investment of this fund in replacements is best expressed, is it not, in terms of continued life?

Trans.

A. That is right.

781

Q. Rather than in any 7% or anything else directly traceable to the \$50,000 he may have put back in the building?

A. Correct.

No knowledge
of effect of
investment of
depreciation
reserve.

(Witness continuing). I testified that the depreciation reserve is 72% invested in the business. No, I do not know to what extent it has prolonged the life of your property. No, I don't think that is the reason for the difference between the observed depreciation and the amount of depreciation as carried on your books because I think the depreciation as carried on your books is in excess

782 of your requirements. No, I can't tell how much the investment of 72% of \$918,000 in your property has extended the useful life in terms of years or time.

Yes, it must have done so, but to just what extent I don't believe that I can tell. Yes, the moment you put \$50,000 in replacements, not only is the useful life extended, but the condition per cent of the structure would go up. It is true that the depreciation reserve on the observed depreciation will never be in balance, but I would say that it should be somewhere within reasonable bounds of one another. No, I wouldn't say necessarily that because you take \$50,000 out of the reserve and put it in a structure you only build back \$50,000 of the useful life of those structures. Yes, Mr. Zelinski found that the annual allowance for depreciation

783 on the straight line method was \$95,020, and that was found for the separate items, and separate

784 amounts, which total that figure. Yes, that represents a return of capital and would be money belonging to the company which might be invested in United States bonds or United States Steel Company bonds or any other type of investment. Yes, the income from those investments would be ex-

Investment of
depreciation
reserve in
business
increases
condition
per cent.

trans.

cluded by me (as not being income produced by rates).

785 Yes, on my sinking fund 5% semi-annual method, the annual depreciation allowance is found to be \$42,588, which is the amount of money which, if taken each year during the useful life of those properties, with interest compounded thereon at $2\frac{1}{2}\%$ each 6 months, would return to the yard company the reconstructed new value of the property as found by the Government engineer approximately. It would return that much money if the installments were invested to earn $2\frac{1}{2}\%$ semi-annually, or 5% annually, during the composite life of the property.

786 Q. But, Mr. Bufkin, a moment ago you testified that the earnings made from the investment of the depreciation fund are to be excluded from income. Why, then, do you not exclude them here as they come up, but insist upon adding those to the fund?

A. Because this is a sinking fund set aside to take care of this particular depreciation reserve account and to replace this property.

Q. But is there any distinction between the income derived in the one case and in the other? Isn't it equally our money?

A. It might be your money; that is your money, but the money invested in this instance is set aside for a particular purpose and is not to be used in any other manner.

Q. But if it is our money, by what right do you say that we must set the earnings as well as the principal aside?

Government counsel objected on the ground that this line of questioning constituted an attack upon the sinking fund method. Objection overruled.

Trans.

787 (Witness continuing). You would have to set the earnings aside in order to build up the fund that would be required at the end of the composite life, and under those circumstances income would not be eliminated because it would be accumulated in the depreciation reserve account for this very purpose. In order to be certain of getting 5% the money might be invested in the plant or it might be invested in high grade securities of some type. I don't know what you would invest it in. No, I have made no investigation as to what high grade securities on present levels net 5%.

788 Yes, a depreciation fund must be reasonably liquid. If you take out of a depreciation fund fifty or a hundred thousand dollars and invest it in the plant, it is frozen to that extent. I pick 5% because 28% of the depreciation reserve of the Stock Yard Company is invested in securities earning approximately 3%. I assume that the rate of return will be somewhere in the neighborhood of 7%; it may be a little over; it may be a little under. I don't know what it will be, but the ratio between that 3% and the approximate rate of return makes 5% very conservative. Yes, apparently on the best judgment of the Board of Directors, the investment of 28% of the depreciation fund nets the Stock Yard Company only 3%. I considered that 72% of the depreciation reserve is invested in the plant, upon which the yard company is earning.

If the sinking fund method were computed on a 4% semi-annual basis the annual allowance would be \$50,030, and on a 3% semi-annual basis, would be in the neighborhood of \$60,000 annually, and on a 6% semi-annual basis, would be about \$36,000.

Sinking Fund
Method.

791 A sinking fund is an amount set aside to take care of some investment or to arrive at some figure

Trans.

in future years. In other words, it is an amount to be credited to meet some obligation.

Q. And under the theory of public service, that obligation in this case is to return to the people who devoted their money and business to the public service, the amount of principal that they have invested or devoted to the public service, isn't that a fact?

A. That is right.

Q. Now, you have spoken of investing the money, sinking fund, in the business.

A. That is right.

Q. Have you ever heard, as a matter of fact, of a sinking fund to meet an obligation being rendered subject to the same hazards as the business which gave rise to that money and to that obligation?

Involves
subjecting
fund to risks
of business.

A. Of course, it is subject to risk, yes, if I understand your question correctly.

Q. Well, as a matter of fact, does not the very nature of a sinking fund imply safety apart from the risk of the source of that money.

A. That is right.

(Witness continuing). No, I do not do violence to a sinking fund theory by investing the money in a business, if it is a going business, and if the concern is earning money. I think that money invested in the stockyards is about as safe as invested in Government bonds. Yes, it was the element of safety incident to the Government bonds and savings banks that in times past forced the requirements that sinking funds be invested as a matter of business practices in either of those two ways. No, the stockyards business is not altogether free from hazard. Any investment is subject to risk.

Trans.

Sinking fund
theory
applied.

No, I don't know whether, as a practical matter, the rate of return is the measure of the risk.

794 Assuming that on July 1, 1935, we deposit \$42,558 in the sinking fund which is the annual amount I have found under the 5% semi-annual sinking fund method. $2\frac{1}{2}\%$ of that is \$1,063.95. Yes, under my theory, that \$42,558 must start earning immediately, and then as it does six months later on January 1, 1936, the \$1,063.95 is to be added, making a total then in the sinking fund of \$43,621.95, which is our new base. On July 1, 1936, there would be \$1,090.55 interest to be added and 795 another \$42,558, making the sum of \$87,270.50. The following January there would be interest of \$2,181.76, which would then make a total of \$89,796 452.26. The following July there would be interest of \$2,236.31 and the principal payment of \$42,558, making a total of \$134,246.57, which would be the new base for compounding interest as of July 1, 1937.

If the company took out \$50,000 and put it into replacements, that would come out of the fund.

Q. That would then leave after that expenditure of \$50,000 in your fund?

A. \$84,246.57.

Q. And up to that point of the \$134,246.57 on July 1, 1937, your fund would have to be liquid, would it not, to provide at least the \$50,000 going into replacements, would it not?

A. Correct.

Q. Now, that base of \$84,246.57 becomes your new base of your sinking fund, does it not, from that time on?

A. That is right.

Q. And since the \$50,000 has gone into re-

Trans.

placements, purely throughout the yard, does it earn anything?

A. Only on the return on the investment in the plant.

Q. Now, please explain that a little bit.

A. I might say it doesn't earn anything from the viewpoint that you have there, it is in the same category as replacements we have talked about previously. It extends the life of the structure but does not earn.

Q. Well, now, your sinking fund, then, by reason of the fact that the interest is cut down through that reduction in principal is going to fall off correspondingly, is it not?

A. That is right. There is no method of depreciation that would take care of the base continued figure, under such circumstances as you mentioned, though, regardless,—

Q. Why not the straight line method? Why won't that, if the straight line method has been applied? Take Mr. Zelinski's exhibit 28.

798 The witness' attention was called to the item of annual depreciation allowance on straight line method on open pens as shown in Government Exhibit 28 of \$24,477 appearing on page S-11.

**Straight line
method
contrasted.**

(Witness continuing). In the example given above we have presumed principal payment for three years. If you take \$24,477 you would have, on the straight line method, in the reserve fund, \$73,431 after three years to cover the open pens. Yes, if \$50,000 were taken out for the replacement of pens the principal of the reserve would be intact because there would be \$23,431 in the reserve remaining for the open pens and \$50,000 of replacements gone into the pens.

Trans.

799 The straight line method not only takes care of the situation but does more. It not only charges off the cost of the investment but it accumulates interest. No, on your assumption that the \$50,000 is put into replacements it does not charge off any investment. It is the interest feature where I think
 800 it does more. Yes, if the \$24,477 had been invested by the company in United States Treasury notes for each of the two years, it would have had approximately \$49,000 of Government securities on which it would be earning approximately 2%. No, I would not have excluded that income if the money had been invested for the purpose of a sinking fund against depreciation reserve. Yes I excluded your earnings on the 28% of your depreciation money invested in securities and that money would not have been eliminated if it was found necessary in maintaining your reserve fund to take care of renewals and replacements of the property. Another thing which is overlooked is the fact that when we take our \$50,000 for the pens, it doesn't mean that our base has gone down to the extent of \$50,000 because over the composite life of the property some items will be in service or last longer than the estimated life.

801 Q. Now let us try to straighten you out on that, Mr. Bufkin. In the straight line example which we used, we were dealing with one particular property?

A. That is right.

802 Q. Under your *sinking fund method* we cannot deal with one particular property because by virtue of the lessened amount of annual allotment of funds for each unit being so reduced, there would not be any \$50,000 which you could take out of the fund in three years if you kept each element separate; now, you don't intend to keep each element separate in

Trans.

this, do you? By that I mean our depreciation fund when deposited or invested would not be so much for pens, so much for chute house, so much for Exchange Building and so much for this, would it?

A. Well, in actual fact it wouldn't, but of course it is figured under those circumstances, but here is the problem, we differ on this: you are talking about an individual asset. I am talking about the whole business, the whole pot that is there. All this money goes into one pot and you are taking out just the pens. I think that is —

Q. Not on your first example, Mr. Bufkin. May I differ with you? I have taken the whole pot, which is \$42,558, starting July 1, 1935?

A. That is right.

Q. And the whole pot after three years amounts to \$134,246.57, doesn't it?

A. Yes, sir.

Q. And out of that whole pot, I have taken \$50,000?

A. That is right.

Q. And that leaves a new base for your sinking fund of \$84,246.57, doesn't it?

A. Yes, sir.

Q. Well, now, maybe we are in agreement on this, Mr. Bufkin. Take under the sinking fund method, unless the full fund runs to the full length of its expected life, there are only two points in the entire cycle where the fund on hand can equal the actual depreciation. And that is at the beginning and at the extreme end?

Trans.

A. That is right.

Q. If you break in anywhere in the middle —

A. — you have upset your figures.

Q. You have upset the figures completely?

A. That is correct, regardless of the method.

Q. Now, wait a minute. That is where I differ with you. Will you explain to me how that breaks it up under the straight line method?

A. You are still taking \$50,000 away from them and you have upset the —

Q. But, Mr. Bufkin, will you kindly take your pencil. Under the straight line method, all that is returned by your percentage is principal, isn't it?

A. That is true.

Q. All right. Now, if you have at all times on hand up to the point where the money is taken out 100 per cent of the principal which should be due at that point, you are not breaking it in the middle or upsetting anything are you?

A. If it runs the entire life of the property?

Q. I did not say that.

A. Read the question.

(Whereupon the question was read).

Q. I mean by that, I will explain, I will make the question a little clearer. Under the straight line method, whether it is at the end of one year or at the end of two years, or at the end of three years, you have on hand in principal amount the exact equivalent of that lapse of time multiplied by the engineers' estimate of

Trans.

the amount which should be annually set aside on the basis of useful life, haven't you?

A. You have the principal, yes, sir, that is, you have the use of the money as you go along, where, under this other plan, you don't.

Q. Well, isn't the money ours as you testified earlier?

A. Yes.

Q. Why shouldn't we have the use of the money, Mr. Bufkin, as an accountant?

A. You have the use of the money.

Q. So I still would like to have you explain to me where the straight line method breaks down upon the extraction of \$50,000 or any other amount for replacement?

A. If you take the money out of the fund for replacement of \$50,000, you have certainly lowered the total reserve to that extent.

Q. I haven't lowered the principal of the reserve, have I?

A. No, you haven't lowered the principal at all.

807 (Witness continuing). Yes, the earnings of a company are subject to income tax and if the company earns 5% there is, at the present time, a 13 $\frac{3}{4}$ % income tax due on those earnings. If your depreciation of loss is \$42,558 that is all the depreciation deduction which the Income Tax Department would permit you to take. The earnings of \$1,063.35 are subject to the 13 $\frac{3}{4}$ % tax and the following year the earnings of \$2,181.76 are subject to the 13 $\frac{3}{4}$ % tax if invested in the plant, that is, if the money is invested in the plant. If invested in securities

Trans.

not subject to the tax, there would be no income tax to pay.

Q. Well, now, do you know whether or not there is any tax exempt security upon which you can earn 5 per cent?

A. I haven't made any investigation along those lines.

Q. And you will admit, will you not, that if any amount is taken out of these earnings for tax or otherwise, you would have to have more than 6 per cent compounded semi-annually in order to reach your ultimate result, wouldn't you?

A. Yes.

Q. Have you made any computation as to how much more?

A. No, sir.

809

Q. Have you ever done any income tax accounting, Mr. Bufkin?

A. Only with railroad companies.

Internal
Revenue
Department
insists on
straight line
method.

Q. Don't you know as a matter of fact that the Internal Revenue Department has consistently and still insists upon the use of the straight line method?

A. Yes, sir.

(Witness continuing). In connection with my statement concerning the cost of the company's structures contrasted with Mr. Zelinski's finding of reconstruction new value, I did not make any study of the labor scales and material prices at the time those structures were built. I took those figures as being the book cost. No, I don't think there is any record of cost back of 1912 or 1913.

Trans.

- 811 On page 6 of my statement I say that if the straight line method had been used \$35,300 annually would have been required to provide for observed depreciation and retirements. No, it is not enough for a depreciation reserve to provide for observed depreciation. There is an element of obsolescence to be taken into consideration, which is very difficult to determine. Yes, this company was started in 1886. There is no record to determine what was done prior to 1912 with regard to depreciation reserve.
- 812 The figure of \$35,300 annual depreciation of loss on the straight line method which I used in my statement, is an approximate figure based on 20 years life of the building to arrive at an amount necessary that would be required to maintain this property. Yes, the engineer finds the composite life to be 31.75 years, but on all the information I think the 20 years is a very conservative period to use. No, I don't know what the plant and appraised value of your property was 20 years ago. Yes, since 1916, which is almost 20 years ago, about \$1,200,000 has been added to the structural property. No, I haven't any figure in my working papers from which I could subtract this approximate figure of \$1,200,000 to show roughly the plant value 20 years ago. Assuming, for purposes of argument, the January 1, 1935, reproduction cost of \$3,000,000 of the structural property, and deducting \$1,200,000, that would leave \$1,800,000.

814 Q. Now, you don't mean to say that on \$1,800,000 we would have, we should have been able to take a depreciation of \$35,300, do you?

A. On the basis of all information I have, including the retirement record, I would say that that would be approximately correct.

Q. Well, now, Mr. Bufkin, you as an ac-

Trans.

countant, do not take the position do you, that we must start, we will say, with \$1,800,000 worth of assets, and take a depreciation reserve on that, and then irrespective of what we may add to the property, we can never take any more depreciation annually, do you?

A. Well, my figure of \$35,300 is based upon what has happened and would have happened upon the straight line method.

Q. Well, now, let us see if you are right even in that statement, Mr. Bufkin, do you know what depreciation we took in the year 1916?

815

A. I don't recall at this moment, no.

Q. Do you know whether we took \$10,000, \$15,000 or \$50,000?

A. In 1916?

Q. Yes. I would think it would be in your working papers or in one of these exhibits somewhere, haven't you an analysis of depreciation reserve in that amount, Exhibit 38?

A. Yes, they are in the working sheets, I think, I have it here. During the year 1916 the records show that you took depreciation --

Q. What page is it please?

A. Page 58, Government Exhibit 38, the depreciation amounted to approximately \$17,000.

Q. So that in the year 1916 we were taking less than your estimate of \$35,300, were we not?

A. That is right.

816 By agreement of counsel the Government introduced Government Exhibit 43 and 43-A, the first sheet of Exhibit 43 being entitled "Comparative Statement, Dealer Purchases and Disposition, Den-

Government
Exhibits
43 and 43 A
Admitted.

trans.

ver Market, for the years ending December 31, 1930, to 1934 inclusive." The second sheet shows the detail of livestock shipped to other markets and also the detail of livestock bought on order. Government Exhibit 43-A, which is the third sheet, shows the number of plants, that is to say, the number of livestock that have been planted with commission firms for sale by traders.

317 Government Exhibits 43 and 43-A received in evidence.

(Witness continuing). Yes, in 1916 the Stock Yard Company was taking approximately \$17,000 depreciation, which is less than my estimate of needed depreciation, straight line, of \$35,300, as given in my statement. About \$1,200,000 was added to the plant since 1916. Yes, when additions are made to the plant the annual depreciation allowance necessarily goes up. No, a depreciation of \$35,300 per year would not be proper on a base of \$1,800,000 if it was a proper depreciation on a base of \$3,000,000. My estimate of \$35,300 is calculated against 19 the age of the property that is out there now, while you were talking of an estimate of 20 years' life against a base of \$1,800,000. I don't know what the base was at the time the company depreciation 22 was \$17,000. I don't think we spoke of a base at that time.

23 The step-up is shown in Government Exhibit 38
25 at page 222 and 220. It occurred in 1928. The old Exchange Building, for example, while starting out at \$30,000 is stepped up to \$64,800 in 1928.

Q. Well, did you make any investigation on the books or the records of the company as to why that property was stepped up, and, at whose demand and at whose request it was stepped up?

Trans.

Increased depreciation reserve required by Government Department in 1928.

A. Yes, sir.

Q. What did you find out?

A. That was due to an agreement with the Internal Revenue Department based—and the base was the March 1, 1913.

Q. Value?

A. Value.

Q. In other words, we had been under-depreciating and under-valuing that structure according to the Internal Revenue Department, had we not?

A. Well, they base their depreciation as straight line on cost, and these figures were agreed to at that time.

835 (Witness continuing). No, I don't agree 100% with the sinking fund theory. I don't agree with the straight line either.

Yes, I stated that the Stock Yard Company had 72% of the depreciation reserve invested in the business. That appears in exhibit A in Government Exhibit 38, and shows total assets in the amount of \$5,524,948.57. The plant account amounts to the gross figure of \$5,035,574.49. The construction account amounts to \$17,637.12; those two items total \$5,053,211.61, which total was financed by \$1,134,000 of bonds; capital stock of \$1,843,500; surplus of \$1,520,555.68, depreciation reserve of \$546,155.93, and those four items total \$5,053,211.61.

837 The plant assets, deferred assets, less the current liabilities total \$114,787.37, which is financed by the depreciation reserve. The balance sheet shows investments in the sum of \$257,974.76, which was also financed by the depreciation reserve. No, I haven't any test or measure of what individual facilities

Trans.

this money was invested in; I couldn't attempt to segregate it, but in my estimation the entire depreciation reserve is invested in the plant and the 28% invested out of surplus, because I think my explanation proves this effectively.

- 840 If a rail is knocked off a fence by a steer and so broken that a new rail has to go in, strictly speaking a new board on the fence is a replacement, but it depends upon this, that where the life of this board is so small that it is not taken up as a replacement, it is not a capital item. If it is one of the main boards it is a replacement and would go
 841 to maintenance. It is very difficult to draw the line between repairs and replacements.

Q. Well, then, we are together on this, that in normal stockyards operation it is exceedingly difficult to segregate repairs, which come as an expense item —

A. That is correct.

- 844 (Witness continuing). Oh, yes, maintenance prolongs the life of the property. Repairs also extend the life of the property, that is evident. No, I don't think that is the answer to why observed depreciation is always out of line with the depreciation reserve, if you take into consideration the **Repairs not excessive.**
 Exhibit 41 shows total repairs for the period 1918 to 1934, inclusive, of \$311,388.36, or an annual average of \$18,317, which I don't think is excessive. Yes, this is added to my recommendations on depreciation, — \$18,000 for repairs and \$40,000 for depreciation. No, the \$40,000 which I recommend will not return the reconstruction new value on the 5% semi-annual sinking fund basis.

Amount recommended will not return investment.

- 846 The depreciation allowance is to maintain the property on which you will earn, and is not a return

Trans.

Theory of depreciation is return of invested capital.

Working capital.

Accounts Receivable excluded from working capital.

of the cost of reconstruction new to you. No, the depreciation fund does not become a maintenance fund, it is set up for renewals and replacements on this property and the repairs are taken into consideration which insures the continuity. Yes, in my previous testimony I admitted that the depreciation reserve was the company's money and that the company had an option whether it would put it back into the plant or let the property run down, but if the company does not intend to cease business, certainly it will need this money for the maintenance of the property or for renewals or replacements. Yes, the theory of depreciation and of your option to put the money either into the plant or in our books, is that the depreciative reserve will return to the owners the reconstruction new value of the property one way or the other if it is going to reach just exactly the end of its service life, but it is not anticipated that you would quit business at the end of that service life. No, the \$40,000 which I have recommended on the 5% semi-annual basis will not return \$3,015,222 and was not intended to do that. No, I am not adopting the estimated life of the properties as found by the Government engineer. I am not adopting the sinking fund 5% semi-annual method at all.

848 Returning to the working capital exhibit (Government Exhibit 42) I recommend \$117,000 working capital. Yes, it is better in accounting practice to include in working capital an amount equivalent to the quick assets. No, I have not included accounts receivable, which are generally quick assets, 849 because the stockyards company have not anything to sell other than service, which is labor and material and supplies and feed which are taken care of in other places, and to have included in accounts receivable items of that character in the working capital would have been a duplication. Yes, it

Trans.

costs money to carry accounts, and the balance sheet shows that on December 31, 1934, the yard company had accounts receivable of \$23,233.52, and in 1933, \$20,551.46, and December, 1932, \$10,892.54; in December, 1931, \$22,138.72; December, 1930, \$18,
850 469.17, and on January 1, 1930, at the commencement of the period, the yard company had accounts receivable of \$25,727.13. Yes, I suppose it has cost the yard company money to carry those accounts because the yard company is out of the use of the
851 money. I made a study of the age of some of these accounts. No, I haven't a memorandum of it because I did not think it was necessary. The item of \$78 accounts receivable from the Bureau of Animal Industry was probably about 30 days old, but that is for rent. The yard company has the right to charge interest on deferred accounts and on accounts which get so old. Yes, altho quick assets are generally included in working capital, I have eliminated this quick asset for the reasons stated.

858 Generally speaking I am acquainted with the replacements, improvements and betterments on new structures made at the yards since 1916. I didn't know that 16½% of the total cattle area was put in in 1928 because I didn't know what the percentage was at that time. The total of the additions in 1928 amounted to approximately \$115,000, \$2,000 in 1929, about \$307,000 in 1930, about \$1,000 in 1931 and 1932 and approximately \$4,000 in 1933 and about \$1,000 in 1934. Yes, I will agree that the younger a structure is the less maintenance and
859 repair and the less replacement is necessary. No, I don't think for that reason that in the early life of a structure a depreciation reserve should greatly exceed the amount deducted from the reserve on account of maintenance, repairs, replacements.

Q. I don't think you and I are thinking along the same line. If you have no repairs,

Trans.

no maintenance, relatively speaking, in the first years of a structure's life, but you are making your annual allowances and allocations to reserve, your reserve will greatly exceed the deductions made from that reserve on account of maintenance, repairs, replacement, will it not?

A. In other words, the installments, Mr. Bosworth, in the early part of the years will not be necessary at that early period that certainly will be necessary later on.

Q. It will be there to be used later on, won't it?

A. Yes, sir.

Q. But in the early years, they pile up as cash or as investments pending their use in later years. Isn't that a fact?

A. Yes, sir.

863 John A. Zelinski, a witness called by the Government and having been previously sworn, was recalled for further testimony.

Direct Examination.

I have prepared an additional exhibit at the request of counsel. It is entitled "Condition Per Cent of Cattle Division, Open Pens."

The said exhibit was marked Government Exhibit 44 and was offered and received in evidence.

As indicated on the bottom of the second page with a double asterisk, the meaning of the first column "length" shows the basis upon which the computations were made to get the relative weight that should be attached to each of the alley subdivisions and the weighted average. For the purpose of easy computation the exhibit was figured on the proportionate length of the alleys in inches

Govt. Exhibit
44 admitted.

ans.

on our 50-foot map Exhibit 8, so that this scale expressed in feet one fiftieth of the length. In order to get the length of the particular alley of the exhibit you would multiply by 50. For example, taking the first item, 5.0 length, multiplying that by 50 means 250 feet, which is the length of the alley for which the particular condition per cent was taken of the pens facing on that alley. Next the condition per cent found by Cushing, by Galbreath, next by Johnson and by the term "next" I mean every alternate column, and then Mr. McClintock who made the actual inventory of the open pens. The column 66 "weight" is the multiplication of the condition per cent of the individual engineer by the length column. That is the way we reflect the weight which should be given to his observation in the computation of the average weight. Double weight is given to the estimate of the man who made the inventory. If all the weight columns on the first item are added together they total 2300, which would then be divided by 30, because the weight for length is 5 and the number of items is 6, because of the double weight attached to the estimate of the man who made the inventory. The condition per cent of that particular tier of pens determined in this way is 68 76.66%. Yes, my method became my rule of thumb, the condition per cent could have been multiplied by the number of pens, but I and my engineers thought that the better division would be to establish a whole tier of pens facing on an alley of the unit which we would use in setting up the separate conditions.

71 Howard D. Dozier, a witness called by the Government, testified as follows:

I am economist for the Packers & Stockyards Division, Bureau of Animal Industry, Department of Agriculture, and have been such for nearly eleven years. I am a native of Tennessee, a graduate of

Trans.

Vanderbilt University at Nashville, and did graduate work at Yale University. I graduated from Vanderbilt University in 1908, was at Yale for four years from 1914 to 1918; thereafter at the University of Georgia, where I became head of the School of Commerce, later at Dartmouth as professor of economics. I then went to Washington, was with the Treasury a short time and for the past ten and a fraction years have occupied my present position. My work has to do with preparation of information in connection with stockyard rate hearings and commission rate hearings, particularly with matters of finance, a study of investments and the general economic situation. Yes, I have written magazine articles for several publications on some phase of finance. Some of the magazines are: The South Atlantic Quarterly, The Railway Age, the publication of the American Federation of Labor—I do not recall its name, The Atlantic Monthly, Journal of Public Utility and Land Economics. I have testified in all of the rate cases held by the Department for almost ten years.

Yes, I have two exhibits. One relates to corporation earnings and the security yield and the other to live stock population and the receipts of livestock at certain markets. One of them, the first page of which is entitled "Public Utility Bonds, Yield at Maturity" has to do with yields on securities and corporate earnings, and is marked for identification Government Exhibit 45.

The next proposed exhibit is a statistical setup of livestock population in certain States and receipts of livestock at certain markets, the first page of that exhibit being a percentage summary based upon the pages which follow, said exhibit being marked for identification as Government Exhibit 46.

874 Yes, in preparation for testifying in this case I

Trans.

have prepared a statement covering my views upon the subject of rate of return.

Thereupon the following statement was read into the record:

875 When I testified in the former hearing held in the early part of 1930, I gave it as my opinion that a schedule of rates which would have produced a rate of return of from $7\frac{1}{2}$ to 8 per cent in the year 1929 would have been reasonable. I was speaking of the year 1929 only, and not of the average rate of return over any particular number of years. I stated on cross-examination that a schedule of rates which would have produced this return in 1929 might produce a return of as high as 10 per cent in unusually good years in the future and it might produce as low as $5\frac{1}{2}$ or 6 per cent in some other years when business was poorer. Up to the time of the hearing held in 1930, 1929 was the best year except one, namely 1928, in the history of the company. Since that time, there have been years which were not so good and others which were better. Nineteen hundred thirty-four was the best year in the history of the company, due to the unusually heavy receipts incident to the handling of government cattle. A rate of return for the year 1934 of above 8 per cent would not prove that the rates which produced such a return were unreasonable. The high earnings were due to the abnormally high receipts, which can not be reasonably expected to continue in the future.

Doxier's
statement on
Rate of
Return:

High return
in 1934 not
proof existing
rates un-
reasonable.

875 In giving my opinion in this hearing as to what constitutes a fair return, I am speaking of the return covering a period of 4 or 5 years. Based upon all the information which I have been able to gather and on the study which I have given the question, it is my opinion that a schedule of rates which would produce over the next few years a rate of

Rates
effective for
4 or 5 years.

Trans.

Reasonable
rates 6½%
to 7%.

return varying from 6½ to 7 per cent would be 876 reasonable. I should like, however, to make this one qualification: I do not think such a schedule of rates would be unreasonable if, in the year 1935, the current year, it should produce a rate somewhat below this zone of reasonableness. I make this statement because I think that the year 1935 will be one of subnormal receipts and that a schedule of reasonable rates could not be expected to yield a normal return in a year of subnormal volume, and, by the same token, if there should occur within the next five years a year of abnormally high receipts and the rates should produce a return of above 7 per cent, I should not for that reason alone judge the rates to be unreasonably high.

Since the last hearing we have passed through the trough of a severe depression. Financial and economic conditions have undergone a marked change, and with these there has come a very great change in the attitude of investors and in the type of securities which they demand. By and large, this can be described by saying that securities which offer safety and liquidity have sold at unusually high prices and low return. Good bonds of longer maturity have gone up in price and down in yield. On the other hand, securities of doubtful character have not been popular. This is almost precisely the reverse of the situation which obtained immediately prior to the fall of 1929. The general trend is a matter of common knowledge, but, for the benefit of those who may review this record, I have made an effort to ascertain the extent to which the yield on high grade bonds and high grade preferred stocks has declined.

878 The basic interest rate in the United States is that received by investors who put their funds in government bonds. The following table shows by

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months from January, 1926, to May, 1935, inclusive, the average annual return on all Government bonds having a maturity of eight years or more. (The yield used at each date for each bond called before maturity is the lower of the two computed yield figures, the one based upon redemption at the earliest call date and the other based upon redemption at maturity. For bonds selling above par and callable at par before maturity, the yields computed on the basis of redemption at the first call date are the ones that are used, while for bonds selling below par yields to maturity are used).

Month 1926 1927 1928 1929 1930 1931 1932 1933 1934 1935

| | | | | | | | | | | |
|-------|------|------|------|------|------|------|------|------|-------|----------|
| Jan. | 3.77 | 3.51 | 3.18 | 3.52 | 3.43 | 3.17 | 4.28 | 3.19 | 3.50 | 2.83 |
| Feb. | 3.71 | 3.48 | 3.19 | 3.62 | 3.41 | 3.27 | 4.07 | 3.29 | 3.32 | 2.73 |
| Mar. | 3.71 | 3.37 | 3.17 | 3.74 | 3.29 | 3.26 | 3.88 | 3.44 | 3.21 | 2.69 |
| Apr. | 3.70 | 3.35 | 3.20 | 3.63 | 3.36 | 3.24 | 3.66 | 3.43 | 3.12 | 2.64 |
| May | 3.67 | 3.31 | 3.24 | 3.64 | 3.30 | 3.13 | 3.71 | 3.31 | 3.01 | 2.61 |
| June | 3.67 | 3.34 | 3.29 | 3.69 | 3.24 | 3.10 | 3.73 | 3.22 | 2.94 | 2.59 (1) |
| July | 3.68 | 3.36 | 3.42 | 3.64 | 3.23 | 3.11 | 3.55 | 3.20 | 2.85 | ..... |
| Aug. | 3.70 | 3.32 | 3.49 | 3.70 | 3.25 | 3.13 | 3.42 | 3.21 | 2.99 | ..... |
| Sept. | 3.70 | 3.30 | 3.46 | 3.68 | 3.23 | 3.24 | 3.38 | 3.20 | 3.20 | ..... |
| Oct. | 3.68 | 3.29 | 3.48 | 3.60 | 3.20 | 3.62 | 3.39 | 3.22 | 3.08 | ..... |
| Nov. | 3.62 | 3.23 | 3.39 | 3.36 | 3.17 | 3.59 | 3.39 | 3.46 | 3.06 | ..... |
| Dec. | 3.56 | 3.17 | 3.46 | 3.37 | 3.20 | 3.92 | 3.31 | 3.53 | 2.97 | ..... |
| Year | 3.68 | 3.34 | 3.35 | 3.60 | 3.28 | 3.31 | 3.66 | 3.31 | ..... | ..... |

(1) June 14, 1935.

79 These figures are compiled daily in the office of the Actuary of the Treasury of the United States, and published periodically. Before leaving Washington, I ascertained from this office the yield as of June 14, 1935. It will be observed that the average yield for the month of January, 1926, was 3.77 per cent and that for the month of May, 1935, 2.61 per cent, and that as of June 14, 1935, was 2.59 per cent. I do not wish to be understood as saying that the yields shown in this statement constitute a fair return upon the fair value of public utility property. The purpose of the table is to measure the decline in yield which has taken place in high grade bonds during the past few years. This decline has been approximately one per cent in the yield on long time government bonds.

Trans.

In order to ascertain on my own account the trends in the cost of money as represented by various types of securities, I began, a number of years ago, the compilation of the price of public utility and industrial bonds, preferred stocks and common stocks and the earnings of the issuing corporation. The results of this study were introduced as an exhibit in the former hearing. Information with respect to the same corporations has been compiled from year to year since that time, and for the purpose of this statement are given in what I shall call "Exhibit 45." Summaries of the result of this study occur on pages 1, 8, 11 and 14. The other pages in the exhibit, with the exception of page 18, which speaks for itself, contain the supporting data. At the left hand margin of page 1 there has been set up a series of yields stepped up by one-quarter of one per cent 880 to 7 per cent. Two other classifications are indicated: Yields below $4\frac{1}{2}$ per cent and those above 7. The yields of the bond issues of the public utility companies and industrial companies shown have been computed on each issue and the number whose yield fell in the designated classifications has been set opposite for each year from 1927 to 1934, inclusive, and as of May 10, 1935. For instance, in 1927 there were 32 issues of public utility bonds out of 80 issues of the public utility corporations studied which yielded to the investor, if held to maturity, from $4\frac{1}{2}$ to $4\frac{3}{4}$ per cent, and on May 10, 1935, there were 6 out of 68 issues which had a yield of from $4\frac{1}{2}$ per cent to $4\frac{3}{4}$ per cent; or, to go to those bonds which yield below $4\frac{1}{2}$ per cent, it will be noted that in 1927, 7 out of 80 issues yielded less than this and on May 10, 43 out of 68 yielded less than this. The same explanation holds good with respect to industrial bonds and the details are set forth in the right hand half of page 1. In the last line of this summary, there is shown what is termed the

rans.

"average annual yield." For the years 1927 to 1933, inclusive, this average is arrived at by a weighing in accordance with the total market value of the entire issue. This is not the case with respect to 1934 and May 10, 1935. The averages there shown are simple arithmetical averages and are not influenced by the size of the issue. If these averages were weighted they would be considerably lower than those shown. I make this statement in order that those who review this record may not be misled. The conclusion which I draw from these yields is that within the period since the last hearing the yield on high grade public utility and industrial bonds has declined by about one per cent.

The situation with respect to public utility preferred stocks is set forth in page 8, and that with respect to industrial preferred stocks at page 11. The yields there shown are on the basis of dividends received. It will be observed that from 1927 to 1930, inclusive, no public utility preferred stock listed sold so as to yield more than 6½%. From 1931 on there were a number of issues of public utility preferred stocks which did sell so as to yield above 7 per cent. The yield on industrial preferred stocks has shown a trend contrary to that of public utility preferred stock. For instance, in the year of the security price panic of 1932, there were some 32 out of 50 industrial preferred stock issues which sold to yield above 7 per cent. In 1933 the number showing such a yield was 13, and in 1934, 5. It will be observed that in 1934, 11 out of 41 issues sold to yield between 4¾ and 5 per cent.

On the basis of the information at my disposal, I am of the opinion that the yield obtainable on good preferred stocks at the present time is approximately one per cent less than that obtainable at the date of the last hearing.

Trans.

**Except in
Public Utility
stocks.**

I think an exception ought to be made to this statement in the case of public utilities. Public utility stocks—both preferred and common—have declined in value until recently. While I have no exact measure in this exhibit of the decline in common stocks, it is a matter of common knowledge 882 that common stocks of public utilities declined to a lower point in 1935 than they did in 1932. This decline was due, in part at least, to special causes, and I do not think should be taken as typical of the general investment market. The information with respect to public utility common stocks is set forth on page 8, and that with respect to industrial common stocks on page 14. From 1927 to 1931, as shown on page 8, a comparatively large number of public utility common stocks sold to yield the investor on the basis of dividends actually paid, less than 4½ per cent. During 1932 and 1933, the yield obtainable from public utility common stocks was greater than this. In 1932, for instance, which was the security panic year, 12 out of 13 sold to yield above 7 per cent; in 1935, 6 out of 11 sold to yield above 7 per cent, and in 1934, 6 out of 9 sold to yield above 7 per cent.

It will be observed, at page 14 of this exhibit, that from 1927 on through 1934, a comparatively large number of industrial common stocks sold to yield to the investor on the basis of dividends paid less than 4½ per cent, and that the majority of them have sold to yield less than 6¼ per cent. This general statement is true with respect to industrial common stocks, since mid-year of 1924, except the period immediately preceding, during and for a short time following the security panic of 1932. Attention is called to the relationship of earnings to price, shown at the bottom of page 14 in the lower left hand corner. It will be observed that for the year 1927 the earnings were 7.26 per cent of the average

Trans.

market price, while the dividends paid were 4.98 per cent of that average price. To put it otherwise, out of every \$7.26 these industrial corporations earned in 1927 they paid out \$4.98. Up to the year 1931 earnings in each year exceeded the dividend payments, but for the years 1931, 1932 and 1933, the earnings were less than the divided payments. This statement applies to this group of corporations as a whole.

The common stock situation has been abnormal for many years, and it is difficult to draw any conclusion from facts relative to it which is thoroughly reliable in forming an opinion with respect to what is a normal yield on common stocks, but we do know this,—that for much of the time for the last ten years the purchaser of common stocks has not been able to get as large a yield in current cash dividends as investors in bonds of the corporations issuing the stocks. On the basis of all the information I have been able to get and of the study which I have done, I am of the opinion that the reasonable rate of return for the Denver Union Stock Yard for the next few years will be one per cent less than would have been reasonable for it during the past few, and as I stated above, it is my opinion that that reasonable rate of return for the next few years will be from $6\frac{1}{2}$ to 7 per cent, with the reservation that there may be unusually poor years in which the return will fall somewhat below this zone, and unusually good years in which it will go above.

Common
Stock
situation
abnormal.

884 After having formed a tentative opinion upon my own investigation of the earnings and the yields on the various types of securities issued by corporations, and after having reached a tentative conclusion with respect to the matter of yields, I checked this opinion by ascertaining the yields as

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Trans.

computed from other sources. The following table is that compiled by Moody relative to industrial and public utilities as they were quoted on the market from day to day.

AVERAGE BOND YIELD (Moody)

| 885 | Year | Industrial | Public Utility |
|-----|----------|------------|----------------|
| | 1919 | 6.18% | 6.21% |
| | 1920 | 6.94 | 7.19 |
| | 1921 | 7.04 | 7.17 |
| | 1922 | 6.04 | 5.93 |
| | 1923 | 6.04 | 5.84 |
| | 1924 | 5.90 | 5.61 |
| | 1925 | 5.61 | 5.29 |
| | 1926 | 5.37 | 5.11 |
| | 1927 | 5.10 | 4.96 |
| | 1928 | 5.10 | 4.87 |
| | 1929 | 5.31 | 5.14 |
| | 1930 | 5.25 | 5.05 |
| | 1931 | 6.08 | 5.27 |
| | 1932 | 6.71 | 6.80 |
| | 1933 | 5.34 | 6.25 |
| | 1934 | 4.52 | 5.40 |
| | 1935 | | |
| | January | 4.33 | 4.98 |
| | February | 4.29 | 4.78 |
| | March | 4.28 | 4.68 |
| | April | 4.31 | 4.65 |
| | May | 4.29 | 4.52 |

886 Another check on security yields and their trends is ascertainable from the prices of new capital issues.

633

Trans.

The following table is that compiled by Moody.

887 Average Price of New Capital

for

Industrial and Public Utility Companies
(Moody)

| Year | Bonds | | Preferred | Stock |
|-------------------|------------|-------------------|------------|-------------------|
| | Industrial | Public Utility | Industrial | Public Utility |
| 1921 | 7.57% | 7.31% | 7.93% | 7.54% |
| 1922 | 6.62 | 6.02 | 7.00 | 7.09 |
| 1923 | 6.37 | 5.98 | 7.21 | 6.85 |
| 1924 | 6.43 | 6.03 | 7.20 | 6.97 |
| 1925 | 6.05 | 5.61 | 6.85 | 6.85 |
| 1926 | 5.83 | 5.50 | 6.83 | 6.77 |
| 1927 | 5.62 | 5.26 | 6.51 | 6.09 |
| 1928 | 5.64 | 5.20 | 6.36 | 5.80 |
| 1929 | 5.76 | 5.21 | 6.09 | 6.11 |
| 1930 | 5.57 | 5.20 | 6.11 | 6.08 |
| 1931 | 5.26 | 4.71 | 6.27 | 5.21 |
| 1932 ¹ | 6.12 | 5.74 | 6.00 | 6.90 |
| 1933 ¹ | 5.56 | 4.98 | 7.23 | ... |
| 1934 ¹ | 6.04 | 4.86 | 6.88 | ... |
| 1935 ¹ | 3.86 | 4.37 | ... | 6.38 |

(1st qr.)

¹ No publicly offered issues.

¹ While these averages are computed on the same basis as for preceding years (1921-1931, inclusive) they must be regarded in most cases as nominal in view of the small volume of new financing.

888 An important factor bearing upon the matter of return is the stability of the industry whose rates are being regulated. For the purpose of comparing The Denver Union Stock Yard Company, stockyard companies generally, public utilities and industrials, I have compiled figures from 1928 onward, in all

Trans.

cases, and from 1927 onward in some cases, showing the relative stability of the various types of industry.

The following table gives the information:

889

Industrials (General)

| No. | Year | Net Worth January 1 | Net Profits | Per Cent Return |
|------|------|---------------------|---------------|-----------------|
| 1435 | 1934 | 23,195,751,000 | 1,051,266,000 | 4.5 |
| 1435 | 1933 | 23,867,791,000 | 640,128,000 | 2.7 |
| 1410 | 1932 | 26,578,332,000 | 105,489,000 | (D) |
| 1410 | 1931 | 28,226,271,900 | 726,230,000 | 2.6 |
| 1560 | 1930 | 35,485,424,000 | 2,346,137,000 | 6.3 |
| 1560 | 1929 | 32,186,570,000 | 4,063,496,000 | 12.6 |
| 1520 | 1928 | 30,378,183,000 | 3,549,154,000 | 11.7 |
| | 1927 | | | (D) Deficit |

Public Utilities

| | | | | |
|-----|------|---------------|-------------|------|
| 138 | 1934 | 9,389,980,000 | 410,850,000 | 4.4 |
| 138 | 1933 | 9,479,901,000 | 423,529,000 | 4.5 |
| 125 | 1932 | 8,546,352,000 | 445,796,000 | 5.2 |
| 125 | 1931 | 8,377,959,000 | 598,949,000 | 7.1 |
| 75 | 1930 | 7,917,711,000 | 752,931,000 | 9.5 |
| 75 | 1929 | 6,853,773,000 | 758,972,000 | 11.1 |
| | 1928 | | | |
| | 1927 | | | |

Stockyard Companies
Net Worth, December 31

| | | | | |
|----|------|-------------|-----------|-----|
| 83 | 1934 | 119,478,135 | 6,734,542 | 5.6 |
| 82 | 1933 | 118,524,497 | 5,471,264 | 4.6 |
| 80 | 1932 | 122,464,326 | 4,563,510 | 3.7 |
| 67 | 1931 | 124,500,562 | 6,584,477 | 5.2 |
| 70 | 1930 | 125,947,530 | 7,069,624 | 5.6 |
| 69 | 1929 | 125,086,418 | 7,114,989 | 5.7 |
| 67 | 1928 | 123,626,211 | 7,533,519 | 6.1 |
| 69 | 1927 | 123,083,257 | 6,829,009 | 5.5 |

Denver Union Stock Yard Company

| | | | |
|------|-----------|---------|-----|
| 1934 | 3,407,807 | 288,040 | 8.5 |
| 1933 | 3,268,824 | 176,481 | 5.4 |
| 1932 | 3,375,734 | 171,423 | 5.0 |
| 1931 | 3,387,594 | 179,545 | 5.3 |
| 1930 | 3,374,725 | 218,667 | 6.5 |
| 1929 | 3,363,936 | 256,621 | 7.6 |
| 1928 | 3,093,666 | 273,966 | 8.9 |
| 1927 | 3,006,686 | 213,827 | 7.1 |

- 890 The figures with respect to industrial corporations and public utilities are those published annually by the National City Bank of New York. Those with respect to stockyard companies generally and The Denver Union Stock Yard specifically are taken from the annual reports filed with the

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Secretary of Agriculture in accordance with the Packers & Stockyards Act, or those set forth in information developed in the rate hearings here at Denver. The per cent return shown in the right-hand column of this table is not to be taken as the rate of return as it is spoken of in a public utility hearing such as this. That rate is ascertained by dividing net profits,—that is, profits after all expenses are paid, including interest, and all reserves have been set up,—by the net worth of the corporations,—that is, the equity to the stockholders as shown by the books of the company. The sole purpose of this table is to ascertain the relative stability of these various types of industry. It will be seen that the stockyards companies have been subject to less variation in their earnings from year to year than either public utilities generally or industrial corporations generally.

891 This completes my statement with respect to a fair return on the fair value of the stockyard property. There is one other subject with respect to which I desire to submit information. That has to do with the livestock population in the trade territory of Denver and the draw of the Denver market and competing markets upon this territory. The facts are set forth in what I shall call for purposes of identification "Government Exhibit 46." The information contained in this exhibit is taken from the estimates of the Department of Agriculture with respect to livestock population and receipts at various markets, as compiled by the Department. The basic figures in this exhibit are revised from time to time. Those shown in this exhibit were as of the date formerly set for this hearing. Since that time certain revisions have been made in the estimates and certain corrections made. The necessary corrections have been carried into the basic figures. The most recent revisions have not, but I have

Trans.

checked these revisions and have found that they are so slight in character that they would make no material change in the summary of the situation as shown on page 1.

The first column in this summary, with the exception of that for the date, contains the number of animals marketed at ten markets which compete more or less with Denver for livestock receipts. The names of the markets are listed at the top of the column, as, for instance, Denver, St. Joseph, Kansas City and others. The figures shown in column 3

892 and the succeeding columns are the percentages of total marketings at the ten markets received by each. For instance, of the 2,908,884 cattle and calves marketed from seven states, shown on page 2 of the exhibit, 19.9 per cent were marketed at Denver, 9.3 per cent at St. Joseph and 21.3 per cent at Kansas City. The same explanation holds good with respect to the other markets shown and for the other species listed in the lower two-thirds of page 1. I have submitted these figures for the purpose of showing the trends in livestock marketing over the past 15 years.

893 Government Exhibits 45 and 46 offered in evidence but right to object was reserved until after cross-examination.

Government counsel then offered in evidence the following exhibits all of which were received in evidence without objection.

Government Exhibit 47, being a Separate from the Yearbook of 1930 of the Department of Agriculture, containing statistics on cattle, hogs, sheep, horses and mules.

894 Government Exhibit 48, being a Separate from the Yearbook of 1931 of the Department of Agriculture, containing statistics on the same classes of livestock.

Govt. Exhibits
45 & 46
received.

Govt. Exhibits
47-52-C ad-
mitted.

Trans.

Government Exhibit 49, being a Separate from the Yearbook of 1932 of the Department of Agriculture, containing statistics on the same classes of livestock.

Government Exhibit 50, being a Separate from the Yearbook of 1933 of the Department of Agriculture, containing statistics on beef cattle, hogs, sheep, horses, mules and asses.

Government Exhibit 51, being a Separate from the Yearbook of 1934 of the Department of Agriculture, containing statistics on the same classes of livestock. Government Exhibit 52, 52-A, 52-B and 52-C being issues of the publication of the United States Department of Agriculture entitled "Crops and Markets" for the month of January to April, inclusive, 895 1935; and particularly that portion entitled "Market Reports on Livestock and Livestock Products."

Cross-examination.

Yes, I am standing upon the method which I pursued in 1930 as the method or theory upon which my rate of return is based, with this modification, that in 1930 I was speaking of a rate of return as of that date based upon the single year 1929. Now I am speaking on the basis of the prospective rate of return to be received in the next few years. Yes, 896 in 1930 I was also speaking of the prospective rate of return that would be received in the next few years, departing from the single year of 1929. When I say "a few years" I mean four or five. No, I have not testified that one-third bonds, one-third preferred stock and one-third common stock is the ideal setup. I am taking the financial structure pretty much as it now exists. Yes, I testified to that in 1930. I never said that one-third bonds, one-third preferred stock and one-third common stock is the ideal setup. I do say that it is a well-balanced financial structure. The structure which

Rates to be
fixed for 4
or 5 years.

Trans.

898 a corporation adopts is a matter of management, from the standpoint of the corporation. I do not believe that having one-third bonds, one-third preferred stock and one-third common is a better capital structure than all common stock.

By saying that one-third bonds, one-third preferred stock and one-third common stock is a well-balanced capital structure I mean that a corporation which has bonds outstanding to the amount of one-third of its value would not inject a great amount of risk,—an undue amount of risk into its bonds, either from the standpoint of principal or interest. I think the same thing is true with respect to the preferred stock. The risk to the industry centered on common stock equal to a third of the value of the corporation would not make those stocks highly speculative. No, I don't mean that if all of the ownership was represented by common stock and there are no bonds or preferred stock, that the common shares would be more speculative. I think that the common stock would be less speculative from the standpoint of the investor than if the corporation had a third of its value covered by bonds and a third of its value covered by preferred stock.

890 My studies generally lead me to believe that a successful corporation which has a history back of it of earnings and is a going concern, conservatively managed, will not endanger the position of a common stockholder if the common stockholders have in front of them one-third of the property covered by bonds and another third of it covered by preferred stock.

I determined that The Denver Union Stock Yard Company, for example, has one-third in bonds, one-third in preferred stock and one-third in common, in this way. The 5% bonds are carried on the books of the company at \$1,134,000. They are call-

Trans.

able at 105 less 25c each year from the call date to maturity. They are at present selling at about 102½ and 103, which is very nearly the present call price. There are 8,945 shares of preferred stock carried on the books at par, callable at 105, and quoted at from 103 to 105. If that call feature were not in the preferred stock it is my opinion that it would sell for about \$120 per share. There are 31,200 shares of common stock without par value, selling or quoted at from \$33 to \$35 per share, and under all the conditions I think the stock is worth that money. I make no change in the bonded indebtedness but I apply the price of \$120 per share to the preferred stock and \$35 a share to the common stock, and when this is done you will see that there is about one-third in bonds, one-third in preferred stock and one-third in common stock. Yes, I arrive at my theory by the process of multiplying the market price, or my estimate of the market price, because that is what I think the securities are worth as revealed by the market. It is an evaluation of the securities and not an evaluation of the property.

903 I do not know what the property is worth. It is the value which the public is now placing upon the securities of the corporation.

I say that the public is placing a value upon the preferred stock \$15 a share higher than the market price because it is a 7% preferred stock which would be capitalized in the open market at about 6%, which would mean a value of \$116 or \$117 per share.

905 I would not use a distress situation as the sole criterion of the present rate of capitalization of income. It might be some criterion. I do not think that it should carry undue weight. What I mean is this, that if I had no information at all except that one scrap of information, I would not base an opinion on it, but I do know that interest rates now on high-grade securities are lower than they

Trans.

have been at any time in the life of anybody sitting in this room. Yes, I think the Crystal Sugar situation is a distress situation, but another example in Colorado is the sale of 6% cumulative preferred stock of the Mississippi River Power Company at a price to yield about 6%. The latter company has assets of \$54,000,000 and is much larger than The Denver Union Stock Yard Co. It operates one of the largest hydro-electric plants in the world, is a public utility
907 and the territory is limited. As an economist from that information alone I would say that because the Mississippi River Power Company preferred stock has sold in this locality on a 6% basis that the securities of The Denver Union Stock Yard Company would sell today on the same basis, but I think it is some indication of the yield which the general public demands on that particular type of investment. Yes, I think the preferred stock of the Stock Yard Company is in the same general class of investment. They are both designated as preferred stock. The preferred stock of the Mississippi River
908 Power Company is redeemable at 115 and accrued dividends and has equal voting right with the common.

909 Yes, when a preferred stock has no conversion right and is redeemable at a fixed price, it rarely sells above the call or redemption price. No, there is no conversion right with regard to The Denver Union Stock Yard Company preferred stock. The call price is 105. I say it would sell at \$120 a share if the redeemable privilege were not in there. Now anything with a blemish on it sells at a lower price than it would sell at if it did not have that blemish. The call feature of these preferred stocks is a blemish from the standpoint of the investing public on that security. When I say "blemish" I cast no aspersions at all upon that security because I believe it a thoroughly good investment.

Trans.

Q. The point, Doctor, is that we are dealing with a condition and not a theory here. Aren't we? This stock has what you call a blemish. By what right then as a fair-minded economist do you overlook that blemish and place a higher price upon this stock than you know, as a matter of fact, it will attain in the eyes of the public?

A. The investors in the preferred stock of The Denver Union Stock Yard Company are getting a higher rate on their investment because of that call price than they could get. Those who own that stock have a handsome investment, and if they were to dispose of it I do not think that they could re-invest their money in other similar corporations which were free to seek their own price level at a yield that good.

Q. But you wouldn't advise Mr. Zelinski, for example, to pay one hundred twenty for Denver Union Stock Yard preferred stock, would you?

911 A. I would not advise Mr. Zelinski to pay one hundred twenty for something today which could be called out from under him by the company tomorrow at one hundred five.

(Witness continuing). In my statement which I read into the record I said, "Up to the time of the hearing held in 1930, 1929 was the best year except one, namely 1928. Since that time there have been years which have not been so good and others which were better." 1934 was a better year than 1928 or 1929. Taking a five-year period from 1930, which excludes the former hearing, every year has been poorer than 1929 with the exception, on the face of it, of 1934. Yes, I speak in my statement of the fact

Trans.

that 1934 was abnormal due to the unusually heavy receipts incidental to the handling of Government cattle. Yes in saying cattle I mean livestock, including pigs and sheep. It is my understanding that the revenue-producing business in 1934 was unusually large. I don't think the Government purchased all species in 1934. It purchased mainly cattle. The Government purchase of hogs was 913 earlier. I do not know about the purchase of sheep.

Q. Well, do you know the amount of income which the auditor in this case has found due to the Government purchasing program in 1934?

A. I haven't studied that—I haven't the figures on that so that I can give them to you accurately. They are in the record.

Q. Well, let us assume that the income account due to the purchase of Government livestock was \$107,938.48 in 1934. Do you know whether or not if that be subtracted as a non-recurrent and unusual, abnormal situation, the result would make the earnings of 1934 equal to or less than 1929?

A. I haven't those figures in front of me, Mr. Bosworth. I will give them to you if you want them tabulated from the audit.

Q. Well, do you know that with the elimination of the Government income account; that is, the income on account of Government purchases, that the net earnings of 1934 would be less than 1929 by almost a hundred thousand dollars? Have you given consideration to that fact?

A. I have not gone into the specific figures of revenues produced by the extraordinary situation in 1934, but I do know that they are much heavier than they would have been had

Trans.

it not been for the Government purchasing program.

Q. Now, Doctor, if it were to appear that the income of 1934, net, eliminating the income on account of the Government livestock, was less than the net income adjusted on the same basis of the years 1929, 1930, 1931, and only about \$5,000 total more than the income of 1932 and \$3,000 more only than the income of 1933, would or would that not affect your judgment in this case and particularly your statement which I quoted to you a moment ago?

915 THE WITNESS: I am not sure that I get your question but I think the following statement will answer it. I testified at the former hearing that in my judgment a schedule of rates which would have produced in 1929 a return of between $7\frac{1}{2}$ and 8 per cent would be reasonable and that in the poor years the return might fall below that and in the good years it might go above that. I stated in my testimony this afternoon that if the returns shown in 1934 had been above 10 per cent I would not, for that reason, have considered the rates unreasonable. If you iron out the unusual situations in volume in 1934, naturally you iron out the peak returns to which I referred.

916 Q. You make the same statement in your oration, I mean your paper here, which you have read into the record, so that your explanation adds nothing to what you have already said. What I am getting at is this, let us put it this way, do you know of any year since 1929 which has returned 10 per cent?

A. I have no calculation.

Q. You know of any year that has returned over 7 per cent?

Trans.

A. As I say I have made no calculation or investigation, either on the value of the yards from year to year which would enable me to calculate a rate of return as of those years or any mathematical calculation which would throw out the non-stockyard expenses or make any adjustments as they would have to be made in a rate hearing. Now, I can answer your question, I think satisfactorily, with this statement, based upon the one previously made. If you take the situation as it actually existed between 1929 and 1934 and iron out all of the unusual conditions, then, my testimony with respect to the unusual rates of return, high and low, also go out of the picture.

(Witness continuing). Yes, I say in my statement on page 2 that I would not think a rate is unreasonable if in the year 1935, it should produce a rate somewhat below this zone of reasonableness. I anticipate that due to this unusual flow of livestock in 1934, it is likely that the income will fall below my rate of return. I am not prepared to give you an estimate of how much, but the decline would be more than one or two per cent.

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Q. Well, then, Doctor, since you have taken a four or five-year period, as you say, would one of these prospective four or five years represent more than two per cent above your return, do you know?

A. I do not.

Q. Well, Doctor, you will agree, as a rate economist, that we are entitled over the period to receive your fair return upon the value of our property, won't you?

A. That is my statement.

Q. Well, is that your statement?

Trans.

A. Why, surely.

Q. All right. Faced with the knowledge, as you have expressed it, that in one of those four or five years we will not receive your fair return, isn't it incumbent upon you to point out or feel definitely that there is bound to be some compensating year or years to make up that loss?

A. Let me answer that question this way.

Q. Well, can't you answer it directly, Doctor? I would prefer to have you answer it directly if you can. If you cannot, well and good.

A. I do not think so. Let me add this, which, I think, will answer the question indirectly. Rate of return in a rate case is one of a number of factors which have to be given weight in arriving at a schedule of rates to be prescribed by the regulatory authority. If the single year, 1935, should be taken, and a return, let us say, of five per cent, be applied against the value of the property, and the number of dollars so ascertained be spread over the light receipts of 1935, you might get precisely the same schedule of rates, or a schedule of rates that was very much of the same altitude as you would get if you took the best year in the five and multiply that by eight per cent and spread that number of dollars over the high receipts. Now, it is my judgment that, due to the unusual conditions which existed in 1934, and which I think will exist in 1935, that it would not be safe for the rate maker to give undue weight to these years, but that taking everything into consideration he should determine as nearly as possible what

Trans.

the receipts are likely to be, let us say, from 1936 onward, and aim, during a period of years following that time, at a schedule of rates which will yield to the company a return of between 6½ and 7 per cent.

Q. Well, now, Doctor, with that pearl of wisdom—

MR. MILES: Now, Mr. Examiner—

MR. BOSWORTH: Strike that. (Continuing) Now, Doctor, the trouble is, as I see it, if in the years 1936, 1937 and 1938, if those with 1935 constitute the four-year period, or adding 1939, if it be a five-year period, we are not only to get your 6½ to 7 per cent return, where do we make up the two per cent loss, two per cent or greater loss of 1935?

A. You have already made it up in 1934.

Q. Oh; thank you, Doctor, that is just what I wanted to find out. Then you are, as of this date, penalizing, or basing your rate for the future upon what we have earned in the past, and are therefore cutting down our rate accordingly, is that what you mean?

A. No, sir, not at all.

Q. Then, explain your statement that we have already had it in 1934?

A. If this schedule of rates had been prescribed in 1929 which from that date up to the end of 1935, had produced a normal rate of return of around 7½ per cent, I should not have judged the rate unreasonably high. I think in arriving at what is fair and just that if you are going to include the unusually high, you ought also to include the unusually low. I think it would be better procedure to rule

Trans.

them both out of the picture so that you would come more nearly to getting a normal period of receipts.

921 In further explanation of the statement I made on page 917 of the transcript about the rate of return running lower than 2%, I had in mind for the moment the volume of receipts and I thought the volume of receipts would run more than 2% less than 1934. Speaking with respect to the net operating income, which is tantamount to the proceeds of the fair rate of return, I shall not be surprised to see the net operating income of 1935 as much as 2% below that of 1934 unadjusted. Yes, in my opinion, the receipts of livestock will fall off greatly in excess of 2%, but how much I do not feel prepared to say.

922 Referring to the Government bond table appearing on page 878 of the official transcript, what I mean by "the basic interest rate" is that when one is looking for an anchor, a point of departure, he usually thinks of the rate receivable on Government bonds as that prevailing for securities of practically no risk. I don't know that I have ever seen the phrase used before. Yes, short term Government or trade acceptances or call money all have a much lower rate at the present time, but I do not think they demonstrate the basic rate or shed much light

923 on the problem. Yes, I testified that at this time I am looking at a five-year period, 1930 to 1934. The only reason these tables start with 1926 is that the published reports before me started with that date. I would give more weight to the five years 1930 to 1934. The average for the 5 year period 1930-1934 is 3.33% or a drop of only 1/3 of 1% from 1929. The 1% drop to which I testified was gotten by comparing 1935 with 1929.

Trans.

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Q. Well, you see, Doctor, you will agree with this, won't you, that this is an important item because if based upon your tables here you reach the conclusion that there has been a drop of one per cent, (in yield) which justifies a drop of one per cent in our fair return, it amounts practically to a reduction of 14 per cent in the amount we are allowed to earn. Isn't that true?

A. I think that is correct.

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Q. So that this question of the basic fairness of your figures upon which you determine that a drop of $13\frac{1}{2}$ to 14 per cent on the rate of return is of considerable moment to the respondent, isn't it?

A. I have always felt that the rate of return is a very important factor in rate making and I still feel so. It is my opinion that for the next few years investors will have to be satisfied with a return less than that which they have received in the past. All the study I have made of the subject of finance in the last few years leads me to the conclusion that the downward trend in interest rates which has been in progress will continue to some extent in the future. I think that we perhaps are reaching the low point in high-grade investment yields at the present time and that we will see within a year or so an upward tendency, but I do not believe that that upward tendency will be so marked as the downward tendency has been.

(Witness continuing). No, I am not taking the low point as the indication of the drop. This table is in respect to Government bonds and Government bonds only. Yes, I reached the same conclusion in other tables, namely that there was a drop of one per cent roughly in industrials and in preferred stock and common stock. I have purposely put

Trans.

a margin into what I think is the zone of reasonableness of the rate of return. If I were figuring it on the present situation without giving any consideration to the future, my inclination would be perhaps to go to $6\frac{1}{2}\%$ or below. I have left a leeway of one-half of one per cent in there so that if those who review this record think that the tendency is upward they may go to the upper zone of my zone of reasonableness. As an expert of the Department on this particular subject my feeling is that interest rates that will prevail before the expiration of the schedule prescribed as a result of this order will be higher than they are at the present time, how much higher I do not know. Yes, I think my method of figuring indicates a drop of one per cent from the high point of the period to the present time.

Q. Not from the high point because from the high point it would indicate a drop of $1\frac{2}{3}$ per cent, the high point was January, 1932.

A. Well, I will revise my statement then and say a drop from 4.28 as of January 1932 to a low point of 2.59 as of June 14, 1935.

935 I did not give particular weight to the annual average yield as shown at the bottom of page 1 of Government Exhibit 45, for the reason heretofore stated with respect to averages. The interest rates shown are for the highest grade tax free bonds,—the highest grade bonds there are in the country and the fact that the number of high grade issues yielding $4\frac{1}{2}\%$ and less compared with 1933 indicates to me that at the present time that the yield
937 on bonds of that type has declined. These are bonds of corporations whose common stocks are listed on the New York stock exchange. Some of the bonds are not listed on the New York stock exchange but I think are listed on the curb. They are all listed securities. Yes, the fact that between

Trans.

1930 and 1935 there has been an increase in the number of bonds of both public utilities and industrials named on this particular list bearing interest below 4½% (listed securities) is one of the factors that leads me to believe that there has been a decline in yield on high grade bonds and influences me in my opinion as to the fair rate of return for the Stock Yard Company.

Yes, if you look at the picture the other way, taking 1934, there were 16 public utility bond issues for that year out of 65, or approximately 25%, 938 which yielded to the investor above six per cent, while in 1930, there were 2 issues out of 84, or approximately 2.4% which showed a yield over 6%, and 7½% in 1929.

Q. Well, now, with 25% of the public utility issues in 1934 bearing six per cent and better according to your data, while in 1930 only 939 2-1/3 per cent bore that interest, and in 1929 only 7½ per cent, how do you figure that that shows there has been a decrease?

A. I stated in my direct testimony with respect to public utilities that the situation within the last year or so has been unusual and very abnormal.

(To obviate this objection by the witness he was asked to take his industrials and figure the same thing).

(Witness continuing). In regard to the industrials in 1934 there were 14 out of 43 issues bearing six per cent or over or approximately 33-1/3%. In 1929 there were four issues out of fifty-six, or approximately 7½%, which bore over six per cent interest, and in 1930, 5 out of 60 bore 8½%.

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More high
yield bonds
in 1934 than
previously.

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Q. Now, therefore, leaving out this question of the abnormal conditions with regard to public utilities, you find with regard to industrials the same proposition, namely, that in the

Trans.

year 1934 there are more of that type of bond bearing 6 per cent and better than there were in 1929, a larger percentage, isn't that a fact?

A. My answer to all these questions is that these figures speak for themselves and any computation, correct computation that is based upon them, I will assent to as the computation naturally.

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Q. All right, Doctor, but unfortunately it is necessary to get into your mind as a preliminary to the next question which is: how, on such a record, assuming our percentages are correct and the facts shown by these figures are true, do you say that that sheet one as to industrials indicates a lower annual yield?

A. All right. Let us take first of all the yield of 4½ per cent on high grade bonds, bonds which I consider of a quality superior even to the good bonds of the Stock Yard Company.

Q. Well, now, just a moment, please. May I interrupt there? Do I understand that you are drawing a distinction between the public utility bonds which you yourself have listed here, and between the industrial bonds which you yourself have listed, making therefore those that bear less than 4½ per cent the high grade bonds and those that bear 6 per cent the weak bonds? Are you making that distinction?

A. I am making this distinction that by and large, good bonds carry a lesser yield than less attractive bonds. Now, not all of these bonds, either public utilities or industrials, are of the same character. I happen to have enumerated and looked up the history of the group of public utility bonds bearing less than 4½ per cent. Now, those are the Triple A and Double A

Trans.

bonds listed by the various services.

Q. Now, will you just give me that list then? I think that is essential.

A. I am handing it to you.

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Q. Thank you, Doctor. Now, I note and apparently this refers to only your tabulation 1934 and to none of the other years. Isn't that true?

A. That is correct.

No issue
considered is
comparable.

Q. What public utility on that list, to your mind, is comparable to The Denver Union Stock Yard Company either in size, amount of the issue, listing or any other factor?

A. I think there is none.

(Witness continuing). The list of bonds bearing 7% or over also applies solely to the year 1934. This contains 12 issues, all of which are listed either 943 on the New York stock exchange or on the curb.

I think that list of securities are all inferior to the bonds of The Denver Union Stock Yard Company. Most of the companies shown on that sheet are in financial difficulty. That is why I compiled the list and it is for this reason that I give little weight to those showing a yield above 7% and because I consider the other list superior to those of The Denver Union Stock Yard, but I do not give the low yield on them considerable weight in reaching my conclusion. The identity of the middle group is shown for the year 1933 in the supporting data; I do not have it for the year 1934. Yes, I have given most weight to yield at maturity. No, I didn't state that it was due to some special circumstance that certain bonds in my Triple A list of public utility bonds bearing below 4½% interest should 944 bear or yield at maturity in excess of 6%. I do not know what my viewpoint is on that until I analyze each of those situations to see why those bonds were selling at that price. I know generally that the

Trans.

companies which have issued those bonds selling
 945 at a higher yield are in difficulties. I think there
 is no industry on either of the lists which I have given you which is closely comparable to The Denver Union Stock Yard Company. No comparable industry considered.

946 I have made no particular effort to find out the yield with regard to unlisted securities of comparable companies. I have made investigation here in Denver in talking with various investment bankers and collected circulars of offerings, and I might say in fairness to everybody that industrial and public utility offerings at the present time are not nearly so frequent as the municipals. Yes, I discussed the Mississippi River Power Company 6% preferred stock circular. No I did not make any attempt to ascertain whether or not any of those shares of stock had been sold in Denver. I do not know that a single share of it was sold or that the market in Denver would absorb a single share. Yes, it would
 947 change my viewpoint with regard to that particular preferred stock if I found that an investment firm, believing that the market would absorb a 6% preferred at par, found that the market would not do so, and if there are a sufficient number of such examples I will revise my opinion on that point. I have found that the industrial bonds such as those issued by the Stock Yard Company and other local issues are selling to yield net to the investor around 5%. The preferred stock of the Great Western Sugar Company, which I do not consider really in a class with the ordinary preferred stock, because it is in reality a bond, is selling to yield 5 $\frac{1}{4}$ to 5-1/3% on dividends paid. The sugar company to which I referred yesterday has a preferred stock outstanding which I consider not so attractive from the standpoint of investment as the stockyards preferred stock. It has got a speculative feature that may bring to the investor a higher yield and a bigger profit but he is taking a risk to do that. I inquired

Trans.

at a number of places in Denver about The Denver Union Stock Yard preferred stock and almost invariably I got this answer, that it is not moving or selling because people think so well of it that they do not want to give it up. I find on inquiry from investment bankers in Denver that if The Denver Union Stock Yard preferred stock did not have the call feature that my own estimate of the selling price at from 115 to 120 is equal to or less than any estimate I have got from anybody. Yes, it is my experience that where an issue is local and small it has a tendency to stay placed. No, I don't think that I have in my Exhibit 45 any preferred stock of any company which can be designated as small compared with The Denver Union Stock Yard Company. Yes, one of the purposes of listing (on the stock exchange) is to give liquidity and ease of trading and a constant market, which generally does not exist in a small local issue. On the other hand, during a period of speculation the price of the small local concern will not rise as high comparatively as those listed on the market, nor will it fall as low comparatively as those listed on the exchanges during periods of depression.

I would not go so far as to say that Government Exhibit 45 contains no truly comparable issues, but I will say that most of those issues are larger than the stockyards issue and furthermore that the main point in that exhibit is to determine the trend in money rates or yields on securities; although the securities may not be comparable, my position is that there is competition for the investor's money and the local trend follows in a general way the general trend, although the two curves up and down will not parallel each other exactly. Yes, I think I testified in the last hearing that the going rate on bonds and stock in the west was between one-half and one per cent higher than the going rate on the listed securities in the east. I feel that has

Trans.

changed somewhat but I do not think it has faded out entirely. The investment situation all over the country is peculiar at the present time. People are running over themselves to get good, high class securities at what seems to me to be ridiculously low yields and I think that has narrowed the spread between the east and the west somewhat, but I still
 952 think there is some spread there. I have not given weight to these particularly low yields on Government bonds or quasi-Government bonds or other securities which, for some special reason, sell at around $2\frac{1}{2}$ to 3 per cent. I don't think that is comparable to the stockyards situation, and I haven't given weight to the fact that some of the highest type industrial bonds have been selling at $4\frac{1}{2}$ per cent or below. Nevertheless I believe it is a fact, and I think some weight must be given to the situation, that since the last hearing there has been a
 953 decline in interest rates. Yes, I said I am taking into consideration the fact that the trend in interest rates would be upward from here on. I have not said that we were at the low point, but I don't see how good securities can sell at the yields they are selling at now for long, for if business ever gets started again, there is going to be a demand for funds and naturally that demand is going to make itself felt in the way of an increase in interest rates.

Decline in
interest rates
since last
hearing.

Q. But, Doctor, the point then comes to this: I would like to have you state into the records the factors which influenced you in reducing our rate of return 14 per cent approximately?

A. And when you say 14%, you mean my estimate of a reasonable rate as of 1929 of $7\frac{1}{2}$ to $8\frac{1}{2}$ and my estimate now of $6\frac{1}{2}$ to 7?

Q. Yes.

A. Well, I think I stated all of those throughout my testimony. I think I can summarize it this way, that those investors who are

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accustomed, on good securities such as the Stock Yard Company bonds, to receive a yield on investment of 6 per cent within the high years of the past will have to be satisfied in the immediate future with a return on their investment of less than that yield, and from all the information at my disposal, I think there will be approximately one per cent on that type of security. I think the same thing is true with respect to preferred stock such as those of The Denver Union Stock Yard Company, which I consider prime investments. Those stocks were selling in 1930 to yield about 7 per cent. I think that they would sell today, if they were allowed to seek their price level free from the call provision at a yield of 6 per cent; I think that the common stockholders should receive in dividends on their equity in the next few years a yield of approximately what the preferred stockholders get on theirs, namely, 6 per cent, and I think in order to be sure that the common stockholders do get their yield, that there ought to go into the rates the idea that they should be high enough to produce a surplus, or what I may have called a reserve for the payment of common dividends sufficient to insure investors in the common stock of The Denver Union Stock Yard Company of a 6 per cent dividend return. I want to make this additional statement: I do not now refer specifically to the securities that are outstanding, but a financial set-up similar to that which is now in existence made applicable to whatever the fair value of this property may be determined to be.

Call price on
preferred is a
condition, not
a theory.

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Q. Well, now, Doctor, two things to my mind stick out particularly in your statement, one is, first, we are dealing with a condition, not a theory, aren't we, with regard to this call

Trans.

price, in other words, as a matter of fact, that fixes the public's evaluation of this stock, does it not?

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A. It fixes the maximum amount that the public will pay for it. It is an artificial condition, so far as the yield is concerned.

Q. And the yard company as such has to continue to pay 7 per cent upon that stock, does it not?

A. That is correct, and it pays a part of that 7 per cent because the privilege it has reserved to itself of calling that preferred stock at \$105 a share.

Q. Now, you are not saying that that was not a proper contract at the time the stock was issued?

A. No, not at all, I think it is wise.

Q. Now, you say the common stockholders are entitled to no greater yield than this preferred stock. Who bears the hazard and the risk actually in corporate organizations?

A. Common stockholders, most of it.

Q. And I believe you stated before and I believe you still will state the same thing, that the amount of hazard, or put it this way, the increase in hazard warrants an increased return, does it not?

A. In a business, yes, sir.

Q. And that holds true with regard to stockholders as well as to the business itself, does it not?

A. That is true.

Q. And since the common stockholder carries the hazard, why do you limit his return to

Trans.

956 the same amount the preferred stockholder is to receive?

A. I do not. I make a provision for an allowance over and above the 6 per cent, which the corporation may keep and use as it sees fit as a reserve to make good that 6 per cent, if in any year it doesn't earn it currently. That reserve is set up there for what I think is the main hazard in this business,—the fluctuations from year to year of the volume of receipts.

Q. And I believe you stated that surplus or reserve or excess allowance is one-half of one per cent, I think you so testified in your return?

A. No, I did not say that, as I recall.

(Witness continuing). I am familiar with the stockyards business from observation and contact with it for a period of ten years, but I have never operated a stockyards, nor have I been engaged in business as a commission man or anything actively in the livestock industry except that I was brought up on a farm and have some interests in farms now. But that experience would add nothing to my qualifications to testify on the risk in the stockyard and
957 commission business. I think that practically all of the hazards which exist in the stockyards business express themselves in the continuity of flow to the market. It is my observation that the losses incident to bad debts and losses of that sort do not occur to any great extent in the stockyards business. Most of the hazards, whatever they may be, are conditions of the business and manifest themselves in an up and down flow to the market, and I am assuming that there will be some fluctuation, how
958 much I do not know, in the volume of receipts. Yes, there are hazards of transportation; I know something about that, although I do not speak from the standpoint of a railroad man or as a livestock

Trans.

Transportation factors
must be
considered.

man. I know that there is a peculiar rate situation that exists here in Denver and I think it is responsible for some of the receipts at Denver. If that should be removed and the receipts at Denver should be permanently cut down, I think it is a factor that ought to be given consideration. If the other markets should get the same privilege and thus reduce receipts, I think that is a factor that has to be considered naturally.

960 When I spoke of special circumstances affecting public utility stock, I had in mind the revelation concerning certain public utility holding companies which have shocked the general investing public and the proposed legislation which has created a feeling of uncertainty. No, I don't think the uncertainty due to the legislation can be called a fear of regulation. The public didn't know whether the legislation would be conservative or less conservative or even radical. Yes the bill and the variations of it have been available to the public for a considerable period. 962 No, I do not think that the fear of regulation affects the stockyards security because stockyards have been under regulation since 1921 and I think the public pretty generally knows the type of regulation it may expect. No, I do not know that there is any decided feeling in Denver at the present time that this constantly recurring regulations or attempted regulations make the securities of the Stock Yard Company less attractive.

963 Referring to the list of public utilities stock in Government Exhibit 45, six out of eleven in 1933, or more than 50% common stock sold to yield above 7%, the eleven companies being those that paid dividends in 1933, and 66-2/3% of such common stock sold to yield above 7% in 1934.

Yields on
Public
Utilities.

Q. We are speaking of common in both instances in these last questions. Now, how

Trans.

does that situation lead you to the conclusion that The Denver Union Stock Yard Company should be limited to 6 per cent, as you have testified in its common stock in order to maintain that stock at the present market?

A. I have stated that a very unusual condition existed and has existed in the public utility field, a situation which I do not believe to exist with respect to The Denver Union Stock Yard Company.

Q. So that you, therefore, I take it, have disregarded the public utility situation in reaching your conclusion?

A. No, I have discounted the unusualness of the condition.

Q. Well, now, on what basis have you discounted it, how much, can you express it?

A. I cannot express it in a figure.

Q. To what extent have you discounted it, then, Doctor?

A. Well, to the extent that I would give less weight to the showing of public utilities than I would industrials.

Q. But, Doctor, to what purpose do you include in your exhibits here stocks that you feel not comparable and which are so affected by peculiar conditions that they are not comparable to the situation affecting the Stock Yard Company? In other words to make the question pointed and as clear as I can, to what extent did the public utility stocks affect your judgment that the trend in interest rates, dividend rates, was such that a reduction of one per cent or approximately 14 per cent in the rate of return of the Stock Yard Company

Trans.

should take place at this time?

A. I stated in my direct testimony that the public utilities situation had been unusual and that the weight which should be given to it was less than that which should be given to securities which behave in a more normal way. I make this statement without reference to my original testimony in the typed form, but I think that is the essence of my general statement. In the explanation of this general situation let me add this, that prior to 1927 I selected as high a class of common stock as I could find listed on the New York Stock Exchange. From that time on the identity of the list of corporations has been kept intact for purposes of comparability and that all information with respect to interest on bonds, dividends on preferred stock, dividends on common stock and earnings on common stock have been continued and that that information is carried forward from year to year. Some of the corporations which are on that list I would not now select if compiling a list of the highest grade common stock, but I have kept the list intact in order to give continuity to the study.

969 Yes, listed common stocks sell actively frequently although there may be no earnings, and the person who buys that stock does not buy on yield, he buys it as a speculation, for anticipated income. Yes, there is always a large element of the purchase of common stocks for appreciation in all purchases of common stock. They are the most speculative class of stocks.

Q. And you say speculative because they bear the risk, don't you, in other words, they have senior securities ahead of them?

A. They are the first shock absorbers.

Trans.

(Witness continuing). Yes, that in part explains my statement on page 883 of the transcript with regard to the increased purchase of common stocks with less attention to yield than formerly, but in part it does not explain it. One thing which has kept the yield on common stock so low is that with
 970 the fall-off in market price, there has been a decline in dividends. The other thing is the fear which was engendered by the losses sustained in the 1929 upheaval, equity securities have not been popular. I think the viewpoint of the public with respect to common stocks is undergoing a change, mostly due to the fact that the fear engendered by past
 971 losses is becoming less pronounced.

The information stated on pages 884 and 885 of the transcript are from Moody's Investment Service, —from the annual publication and from direct inquiry. Yes, the average industrial bond yield for the five-year period 1930 to 1934 is 5.58%. The yield for 1929 is 5.31%; hence the average yield for the period is .27 per cent above 1929.

972 Q. Well, now, Doctor, does that indicate to you a decrease from 1929 of one per cent, as you have stated in your statement?

A. No, it does not. It indicates to me that by averaging a set of figures which are declining, that the decline can be covered up.

Q. But, Doctor, since you are looking at this situation, you now state, from the basis of five years of past history, will you state again why you should not take that average as the fair indication of yield?

A. Because I do not believe that that five-year period, so far as yield is concerned, is what may be reasonably expected in the immediate future.

Figures do not indicate drop in fair return.

Trans.

(Witness continuing). By "immediate future" I mean for a period of four or five years in the future. No, it is not my opinion that we will stay 973 on the present interest rate or lower. I have already stated that in my opinion we must be approaching the period of the low yield on the highest type of securities and that sometime during the period of four or five years in the future there will be a tendency toward a rising interest rate. How far 974 in the future that turn upward will take place, I cannot judge. Yes, I stated that taking this low point there has been a decline of one per cent on the average in the trend of both bonds, preferred stock and common stock in my opinion, but if I thought we were in an interest period which is going to continue as low as it is now, I think my recommendation in respect to a rate of return would have been as low as $6\frac{1}{2}\%$, but believing there is likely to be an upward trend in industry, I have given as my opinion of the upper zone of reasonableness 7%, which is one-half of one per cent below the rate which I believe was found reasonable in the other case and approved by the court. Yes, I have stated that I thought the zone of reasonableness for the next few years would be between $6\frac{1}{2}$ and 7%.

975 A part of the information in schedule on page 887 of the transcript was obtained by direct correspondence with the Moody Investment Service and the balance from pamphlets and bulletins issued by that Service.

976 Counsel for respondent stated that a check of all of the Moody services in Denver failed to reveal such information and requested the witness to furnish his source, which witness stated he would do from Washington.

(Witness continuing). According to that table the cost of new capital in 1934 for industrial bonds was 6.04% as against 5.76% in 1929.

Decline of 1%
based on low
yield period.

Govt. witness
recommends
 $6\frac{1}{2}\%$ to 7%.

Trans.

Q. Does that indicate to you as to industrials that there has been a decline in trend in the cost or average price of new capital?

A. Read me the question again.

(Whereupon the question was read).

A. That in and of itself does not, but I call particular attention to the footnote at the bottom of that page which reads as follows and is a quotation from the Moody Service: "While these averages"—that refers to the years 1932, '33, '34 and '35—"are computed on the same basis as for preceding years, 1921 to 1931, they must be regarded in most cases as nominal in view of the small volume of new financing."

Q. But, Doctor, if you did compile this from Moody's data, that expresses the best available opinion in your mind, does it not, or best available estimate of the average price of new capital during those years?

A. I think those figures are correct as the computations are made.

Q. Well, then Doctor, again I repeat, does that indicate a declining average price of new capital?

A. On its face it does not. As a matter of fact, I do not think a great deal of weight should be given to the figures from 1932 to 1935 for the reasons stated in the footnote. A literal interpretation of those figures would indicate an increase in the yield demanded on new capital.

978 (Witness continuing). I do not think these figures carry into them the amount of industrial financing done by the Reconstruction Finance Corporation. That financing, in my opinion, has had

Figures do not
indicate
decreasing
yield.

Trans.

the effect of a reduction in yield of public offerings.

979 Taking the third column of the table it shows 6.88 average cost of new capital for industrial preferred stock in 1934 as against 6.09 for 1929. No, that does not indicate to me a trend through the period downward. The yield has varied from year to year. Yes, in 1933 the yield got up as high as 7.23%.

Figures do not indicate decreasing yield.

981 No, I do not have the names of the companies shown in the tabulation of stockyard companies on page 889, or the names of the public utilities or the industrials shown on that page. No, I think I stated in my direct testimony that I had used these merely for the purpose of gauging the stability of the different types of industrials shown and did not place much reliance on them. I also called attention to the fact that the last column on that page "Per cent Return" should not be confused with what I have been talking about during my testimony as to a fair rate of return or the fair value of stockyards property. I gradually came to the general conclusion that the stockyard business, as a whole, is a very stable business, and in order to check that impression which I had gained I compiled these figures for the purpose solely of measuring as accurately as I could the relative stability of stockyards stock with other industries. That table has nothing to do with the altitude of earnings to be made.

983 Yes, public utilities generally operate under a franchise so that if anyone wants the service they get it solely from that concern. There is a monopolistic element. Their competition is only with substitutes such as electricity and coal for heat. Yes, the competition is with some totally different element or commodity. That is not true with regard to stockyards. I think the prospective user of stock-

Competition
a factor in
stockyards.

Trans.

yards services has a wider choice from which to select his services than the user of electricity in a city which is lighted by one company.

Q. Well, now you take, we will say, a cattle raiser at Rifle, Colorado, he has a choice with no additional expense to himself, does he not, of all the river markets, the Chicago market, as well as the Denver market? When I say all the river markets that is perhaps a little broad; I should eliminate St. Paul.

984

A. I think that is true with this provision about which I myself do not know. If he can stand the freight rate, difference in freight rate for the different points, then, he has that choice.

Q. But, Doctor, don't you realize from your study of the stockyards industry that the price paid at Omaha on, we will say, a fat steer is the price paid at Denver on the same day approximately, plus the freight, so that the shipper is not out even the freight?

985

A. I realize that is the case, but the shipper does not always have at the same time the choice at the particular moment that he is going to ship his cattle. Now, what you say is generally true and I am not disputing that, but it may be that on the day on which a man wants to ship his cattle he has only one point to which he can ship it, for the reason that the price on that particular market, or the conditions at that particular time, make it to his advantage to ship to that particular market and to his disadvantage to ship to any other market. If that were not the case, then your statement would be literally true that a shipper at any day in the year might ship his cattle to any market that he chose and get the same net price for it.

667

Q. What I am meaning, Doctor, was your

Trans.

statement that, "oh, yes, he could do that provided he could stand the freight." Now, the shipper never stands the freight in the livestock industry, does he?

A. No, but the cost of the freight and the other costs total a sum which eventually determines for him the place to ship his livestock.

Q. But, Doctor, isn't that fact the essential earmark of freedom of choice? He only ships to one because of an advantage, as he sees it. If he didn't see that advantage, he can ship to any other market without any additional cost to him, can't he?

986 A. That is correct.

Q. Now, you don't have that situation with regard to a public utility, do you?

A. No.

(Witness continuing). I do not think there is any franchise grant to a stockyard company nor any certificates of convenience or necessity required before a new stockyard could be started.

Stockyards
have no
franchise
or monopoly.

987 This list of 83 stockyards as of 1934 includes auction yards insofar as they have been posted by the Secretary. No I do not know how many of those 83 so-called stockyards have their securities publicly sold or quoted. It is my judgment that a great many of them do not have their securities publicly sold. Some of them are not corporations. I do not think hog concentration yards are included in the list.

By "net worth as of December 31", that represents the book value going to the various classes of stockholders. No, although under my definition the book value has decreased from 123,000,000 in 1927 to 119,000,000 in 1934, the number of yards has in-

Trans.

creased from 69 to 83. I have not analyzed the figures sufficiently to answer that question. It may be a change in financial set-up or it may be the writing down of values. I cannot answer that.

The witness was requested to furnish a list of the stockyards and more detailed figures.

(Witness continuing). That list has played no part in my determination that a reasonable return for the Stock Yard Company at Denver is $6\frac{1}{2}$ to 7 per cent. It has merely indicated to me that the stockyard industry is a comparatively stable industry. Yes, the list would furnish an indication of fluctuation in receipts both in the number of head 989 and number of dollars. I do not know the extent to which the factors fluctuate from year to year, but I do know in a general way that there is some fluctuation. No, I made no investigation of that.

Gave no consideration to decline in 1935 earnings.

Q. Well, now, did you give any consideration to the fact that as far as Denver is concerned, The Denver Union Stock Yard Company, its earnings this year have declined 45.85 per cent over a similar period of 1934.

A. Will you read that back to me, please?

(Whereupon the question was read).

A. You refer to earnings, or to volume of business?

Q. Earnings.

A. I did not know what the earnings of the yards up to date are or were.

Q. Well, if you were to add, or, rather, take of our earnings \$5,000 which was not paid until December of 1934, for a certain service which has been paid in advance during this period, that the decrease would amount to 54 per cent?

Trans.

You have given no consideration to that, have you?

A. Well, I did not have before me specific figures and could, therefore, give no consideration to them. I have assumed that 1935 would not be nearly as good a year for the Denver Stock Yard Company as was the year 1934.

Q. Well, Doctor, have you given that fact consideration in your rate of return?

A. In this way I have, Mr. Bosworth. I have this feeling about it in fairness to the Stock Yard Company and its patrons: if the cut-off is at the end of 1934 and it be assumed that that is the volume which must produce the return, I think the rates would be pressed downward and that would not act against the interest and perhaps be unfair to the Stock Yard Company. On the other hand, you assume that 1935 is going to be a year of very low volume and that the return is to be collected by a schedule of rates high because of that low volume, it would be unfair to the shippers. Now, I have this feeling about it: whatever test period is finally decided upon by those who decide what these rates ought to be, that if they include in that test period the year 1934 as it actually was, they ought to include along with it the year 1935 as it actually will be. If, on the other hand, adjustments are to be made in the year 1934 for unusual conditions, then those who decide the case ought to remember also that the chances are that 1935 will be unusual in the other direction.

(Witness continuing). I do not think that it is necessary to have a compensating year to make up for the low years when the return is less than a

Trans.

- reasonable return. If compensation is to be made, it can be made by a schedule of rates applicable to all years and that schedule of rates would be somewhat higher than the rates would be otherwise. Yes, in unusual conditions in a single year the schedule of rates may exceed the rate of return and should secure or produce a return in excess of what I have recommended as a fair rate of return. The schedule of rates which is ultimately decided upon will produce a certain amount of net operating income year in and year out over the period. If I were called on to do the job, at the end of the next five years I would add the net operating income and if it amounted to 35 per cent of the fair value of the property I would know I was on the right track. The 35% is five times the annual fair return of 7%. This is from a practical standpoint and a part of that would be due to feeling and not to reason. If at the end of five years it was found that the return was less, I would say that the rates ought to be revised. I can't say that I would increase them over the next five year period above what might then be a fair return to make up, but if I was charged with that responsibility and found that I had made a mistake, I would do my best to rectify it
- 992 993 Yes the schedule of rates is supposed to return as closely as practical a fair rate of return as determined by the Secretary within the zone of reasonableness somewhere above confiscation, which I cannot determine.
- 994 995 The per cent return shown on page 889 is the relationship between net profits,—not net operating profit—divided by the book value of the concern. The rate of return is the return on the fair value of all the property. All of the property is not represented in those figures on page 889. Those figures do not include the bonded indebtedness, nor do net profits include the interest paid on bonds. (The table re-

Trans.

ferred to by the witness is the table on bottom of page 889 of the transcript referring to respondent). Yes, I think it is correct that this table includes income from Government purchases. It is my understanding that it includes all of the income received by the company from any source, whether stockyards

997 or non-stockyards operations. Yes, I stated that bonded indebtedness had not been eliminated from net worth because net worth does not include bonds.

The figures shown in the bottom table for 1934 show the net worth of The Denver Union Stock Yard Company to be \$3,407,807. The net proceeds are the earnings after interest has been paid and the net worth is the figure which stands on the books of the company as the value of the preferred stock, the various reserves which belong to the common stockholders, the surplus and the common stock, which, as I think it is in the case of the Stock Yard Company being no-par value, means everything after

999 the value of the preferred stock. Yes, the figure of \$288,040 includes the Government cattle and sheep income. The \$23,000,000,000 shown for industrial stock (in another table on the same page) is not comparable in size, but the composition of the \$23,000,000,000 is the same as the composition of the \$3,407,807. Yes the \$23,000,000,000 of industrials

1000 exclude the \$9,000,000,000 of public utilities. The industrials come from the National City Bank list and there are 9 stockyards included for the year 1934 and 1933, 10 for the years 1932 and 1931, 10 for the years 1930 and 1929 and 7 for the years 1928 and 1927. No, they are not classed under public utilities.

Yes, I characterize 1932 as the worst security crash of this era, and due to it there was a great deal of distress selling both of commodities as well as stock,—everything that one had to sell.

1001 My schedule at the bottom of page 889 of the

Trans.

transcript shows the book value of The Denver Union Stock Yard Company in 1934 as \$3,407,807 and shows approximately \$1,340,000 of bonds outstanding, so that the net worth and funded debt of the company would be \$4,747,807. The interest on the funded debt at 5% is \$66,242, and if that be added to the net profits shown in the schedule of \$288,040, there is a net operating income of \$354,282. Assuming that the record shows the net income derived from Government purchases in 1934 to be \$107,000, if that figure be deducted from the net operating profit, there is left \$247,282, which is approximately 5½% of the net worth and funded debt.

1003 Yes, the company has to pay 5% interest on whatever of its bonds are outstanding and 7% on the preferred stock. Yes, I believe the bonds were sold at 94 and 95 and have what is known as the tax free covenant. No, I do not recall my testimony in the former hearing that the tax free covenant and the bond discount added one-half of one per cent to the coupon rate, but so far as this case is concerned and so that there may be no misunderstanding, the rate of return to which I have testified in this case does not include anything on account of cost of financing. All taxes, including the tax free covenant, I assume are included in operating expense. [If anything is to be added for cost of financing then that should be added to my rate
1005 of return.]

The question of the value of the service to the patron is a question which arises in the rates themselves and the structure of the rates is determined. I assume that when the rates are finally determined that they will be within the value of the service to the patron.

Q. I am asking you whether, in reaching your idea of 6½ to 7% rate of return, you have

Trans.

taken into consideration to any extent the question of whether that return is the value of the service to the patron or whether it simply represents what you, in your opinion, feel is all that the Stock Yard Company should be permitted to earn.

Government counsel objected on the grounds that the value of the service was immaterial. Objection overruled.

(Witness continuing). The value of the service to the shipper is worth a great deal more than the rate of return to which I testified. To find the value of the service or to compare the value of the service to the shipper you would have to add to my rate of return all of the operating expenses and all the other legitimate expenses. I have considered the value of the service from the standpoint of determining in my own mind whether the traffic will bear the rate of return which I have fixed. I take the situation as it is.

Value of
service
exceeds
allowed rate
of return.

Q. Do you know relatively what the level of the livestock price is today compared with the, either the five-year average from 1930 to 1934, inclusive, as compared to the 1929 level of prices?

MR. MILES: Renew the objection, Mr. Examiner, it is so absolutely utterly immaterial.

THE EXAMINER: Objection overruled.

A. Why, I do not keep currently posted on the daily prices of livestock, but from my general information, I do know that livestock prices are much higher now than they were at the low point. That is a general statement, and I can't measure it mathematically or by an index number. I mean to say that I do not have that information.

Trans.

**Expense of
rate hearings
not included.**

1009 (Witness continuing). No, I have included nothing to cover the expenses of these rate hearings.

As to Government Exhibit 46 the first page is a percentage summary showing the number of head of livestock by species marketed at a number of markets including Denver and is based on the detail contained in the pages which follow. These pages also show the livestock population in various States as estimated by the Department of Agriculture. For

1010 instance, returning to page 1, in 1934 there were marketed at Denver, St. Joseph, Kansas City, Omaha, Sioux City, Chicago, Ogden, Salt Lake, San Francisco and Los Angeles, from the States of Colorado, New Mexico, Texas, Utah, Wyoming, Idaho and Nebraska 4,186,597 head of cattle and calves, of

1011 which 17.4 per cent were marketed at Denver. No, these percentages have nothing to do with the number of head of livestock actually marketed but are only the receipts. It does not include direct sales in the country.

Yes, I am familiar with the fact that of the receipts at a given market a greater percentage will be sold 1012 at one market than at another. The character of the Denver market is more of a transit point where cattle come in and try the market, and if satisfied with the prices are sold to move on ultimately to a final destination. No, the relationship of sales to receipts is not shown in this exhibit. Yes, livestock which merely stops to feed and is not sold is counted in the receipts, if the livestock company counts them so far as these figures are concerned. I do not know whether they do or not. If the stock-yard company counts such livestock in its receipts it would not affect my opinion. It is my understanding that livestock which stops to try the market and is not sold, is forwarded without a yardage charge, but that livestock does consume feed on which the company makes a profit. The expenses

Trans.

incurred are incurred on account of the livestock received and the income is from the livestock as you receive it. I have made no effort to analyze sales percentages at all. No, I don't think the sales percentages would affect the pertinency of my figures. They are stated for what they are worth.

Q. What I am trying to find out is what they are worth, Doctor.

A. Those, in my judgment, are the most accurate figures of livestock receipts at the stockyards that are available. Now, I am not a livestock statistician but I have compiled those figures from sources that I believe to be correct.

(Witness continuing). The pertinency of the percentage figures on the first page of the exhibit is that they show Denver received a smaller percentage of the livestock from these States in 1934 than in 1927. Yes, this exhibit shows that Denver is in a competitive situation with 9 other markets shown on the sheet. No, it does not show the competition of the Denver market with the problem of direct buying. As to that problem and as to whether or not it has increased within the last 5 years, I have looked over the report prepared by the Bureau of Agricultural Economics which report is more authentic than anything I might say. I will provide a copy of it for the record.

Denver competes with other markets.

016 017 018 Yes, I know that receipts of cattle from Colorado at Denver have decreased from 408,000 head in 1926 to 299,000 in 1933, or roughly 26%. That is shown on page 2 of Government Exhibit 46. The second column on page 2 of the exhibit shows the cattle and calf population for those years to be 1,406,000 in 1926 in Colorado and 1,526,000 in 1933. No, I don't know what percentage of that population was marketed in either of those years. Denver received

Trans.

about 29% in 1926 and 19.6% in 1933. Yes, that shows a decrease relative to the number of head on farms on those dates. All that I could say from those figures is that Denver is receiving a smaller percentage of the population, cattle population, now than it was formerly. All the reasons for it, I do not know.

1019 (Witness continuing). The percentage of Idaho lambs received at Denver has increased from 7.6% in 1930 to 30.8% of that State's shipments to the ten markets in 1934. I have been under the impression that the transit privilege as it exists at Denver has helped Denver's sheep receipts.

Hazards at
Denver.

1020 As to the hazards of the business at Denver, I stated yesterday that I think the variation in volume received is the factor which has to be given consideration. There are many things which influence that, and I do not think that I can enumerate all of them. I think that the freight rate structure influences the flow of livestock and that Denver has an advantage now which it is likely to lose that may have some influence on the future receipts of 1021 the business. Yes, direct buying, fluctuations of livestock, prices, disease, are conditions of the live- stock industry. In my rate of return I have assumed that there are hazards in the business. I have assumed also that in meeting these hazards and in the expenditure of money on account of them, that that money will show up in the expense account, and if those who finally pass upon it feel that these specific hazards ought to be insured against, that that matter will be given consideration.

Q. But, Doctor, doesn't that affect your determination in a way of the rate of return because I believe you will admit that, for example, take a change in the freight rate situation, that perhaps can be partially offset or per-

Trans.

1022

haps entirely offset by an increase of solicitation, by an increase in advertising, by an improvement in facilities, by an endeavor to increase the buyers on the market, including packers, so as to increase the market outlet, and if those efforts result in greatly increased, and I take it from you, properly increased operating expénses, it leaves a smaller balance which does affect, does it not, what you call your net rate of return?

A. No, because if those are counted in the operating expenses and are carried into the operating expenses, the effect will be to raise the rates higher than they otherwise would have been and those higher rates will produce more gross revenues, and when you subtract the increased expenses from the increased gross revenues, your return, your hazards are paid for and your return is there.

Q. But, Doctor, it seems to me that you have made an assumption which was not within my question. You assume that these efforts will result in increased revenue. My assumption was that these efforts were being put out to maintain the revenues at their present level, we will say, which present level may or may not be due in part to these freight-rate situations.

A. Then your efforts in part, at any rate, are a mistake on the part of management.

(Witness continuing). I am not testifying as 024 to a gross rate of return. I am testifying as to a net rate of return. Yes, I think the rates prescribed ought to contemplate that the company will make reasonable effort to increase its business if there is 025 reasonable opportunity for it to do so. I think that

Trans.

reasonable expenses for holding what business you have and increasing your business should be allowed, but I can't tell what the bounds of reasonableness is. I think you are entitled to pass a reasonable amount of expense on to your shippers 1026 on account of that effort: I can't say that presumptively the efforts made by the management for the protection of its own business and its increase are reasonable. They may be unreasonable. I think there can be excessive expenditures in the stockyards business on account of advertising. I do not know what your expenses are on that account, but merely because expenses happen to be 1030 made by a management does not sanctify them in my opinion. In the rate of return to which I have testified I have excluded nothing to meet the situation about which you speak (the possible loss of the transit privilege). If that situation develops and it appears that it is right and proper for an allowance to be carried into rates to meet it, then those who fix the rates should put it in there. I have not.

Does not give weight to freight situations.

Higher rate recommended at Omaha.

Yea, I have traveled over the various markets and their territory. I have heard talk about an 1031 out-of-line haul to reach the Denver market from Cheyenne, and have heard a good deal about the Dotsero Cut-off and Denver being on the main line in the last rate hearing. Yes, there is Pueblo and what is known as the Pueblo Cut-off at the south 1032 and the Cheyenne Gateway on the Union Pacific at the north. Yes, I would think that the hazard of diversion of livestock is a hazard of the Denver market which does not exist at Omaha to the same extent. My answers on these freight situations should not be given great weight.

1032 Q. Well, the point is, and coming briefly to it, if that be a hazard, you recommended a

Trans.

rate at Omaha of 7 to $7\frac{1}{2}\%$. What change has occurred since your recommendation in Omaha which leads you to reduce your estimated fair rate of return one-half of one per cent?

A. I think those are stated in my main testimony and cross examination. I could add nothing.

(Witness continuing). I cannot answer directly Denver a
the question as to whether or not I see the same more sea-
hazard in Denver as I did in the Omaha market. sonal market.
I will make this statement that from my observa-
tion I think Denver is a more seasonal market than
Omaha. I don't think that increases the hazard.

1033 It may increase somewhat the expense of Denver
doing business over and above what Denver's ex-
pense would be if it had an even flow throughout
the year and that expense is reflected in the ex-
penses as incurred and shown.

Q. Just one last question which is so that
we can be sure of it, and please try to make
this answer specific, Doctor. If I understand
your testimony you are figuring this one per
cent decrease in yield by comparing 1934 or
1935 so far with 1929 and not with the average
yields during the five-year period?

A. I cannot answer that question directly
because I am doing neither. I have not taken
into consideration mathematically the averages
except on a monthly basis or a yearly basis at
Denver merely for the purpose of time determina-
tion, but I am making my recommendation
on this basis: from the date of the last hear-
ing downward to the present time, 1935, and
I think continuing sometime in the future, in-
vestors will have to be satisfied in the future,
the date during which these rates will be in

Trans.

effect, with a smaller return than they have been accustomed to. Now, I cannot state it clearer than that.

1034

Q. Then, you are using a trend, as you see it, and not an average?

A. That is correct.

Q. And you will admit that the average, if an average were used, would not show on your Government Exhibit 45 or in the tables used in your statement, a one per cent drop from 1929 to that average?

A. The figures speak for themselves and I think the computations have been made.

MR. BOSWORTH: That is all.

1035

Re-Direct Examination.

In my rate of return I made no provision for amortizing the bonds of the stockyards. Yes, my figures of receipts at the Denver yards include the direct purchases by the packers.

The first hearing under the Packers & Stockyards Act in any stockyards was in 1922. In adopting the language of "constantly recurring expense for these hearings" as used by respondent's attorney, I had knowledge of the fact that a hearing had been held in Denver in 1930 and a very vivid consciousness of the fact that one is being held now.

1036 No, I wouldn't think that would entitle it to be called "constantly recurring expense."

Re-cross Examination

Yes, I think I know why the yard company had an appraisal of its real estate made in 1925. I know that a rate hearing was in the air in 1926 because my first visit to Denver was in 1926, when I met Mr. Arthur Bosworth and asked him for

Trans.

information, telling him not to give me any information that I should not have. He told me that the only confidential information was that he did not want his competitors here in Denver to know that he was trying to buy the yards and I do know that one of the factors that he took into consideration and asked me about at that time was the prospective rate hearing.

1037 No, I do not know the extent to which packer directs affect this market compared to other markets.

I made no allowance for amortization of bonds in my rate of return, not because I feel that a stockyards company should remain in debt. I think it is a wise provision for a stockyards company or any other corporation to get out of debt, but speaking specifically with respect to a regulated industry and The Denver Union Stock Yard Company, if it gets out of debt I think the stockholders who get the increase in equity should pay the bill and not the patrons who use the market. On short-term borrowings at the bank, I have assumed that the interest will go into the expense account, but after amortizing the principal of short-term loans, I look upon that as a phase of operation. There is

No provision
for amortizing
any debt.

1038 nothing in my rate of return to amortize any type of indebtedness. Yes, I know that in order to get a loan through a bank you must give reasonable assurance that you can pay the debt.

THE EXAMINER: Is there objection to Government Exhibits 45 and 46?

Government
Exhibits 45
and 46 ad-
mitted over
objections.

MR. BOSWORTH: Yes, Mr. Examiner, we object on the ground that they are incompetent, irrelevant and immaterial, as shown by the cross-examination of this witness, no corporation stated thereon being, as he stated, comparable in any manner to The Denver Union Stock Yard Company.

Trans.

MR. MILES: Renew the offer on the ground that the cross-examination made them competent and material.

MR. EXAMINER: Objection overruled and Government Exhibits 45 and 46 will be received. Witness excused.

(Whereupon *Government Exhibits Nos. 45 and 46* received in evidence).

1038-A In response to request for information as to where I obtained the figures shown in my testimony relative to the average price of new capital for industrial and public utility companies, the information for the years 1921 to 1933, inclusive, will be found at page A-39 of the Special Features of the blue insert of Moody's Industrial Manual for the year 1934, following page 1856 of the principal pages in the volume. The information for 1934 and the first quarter of 1935 was obtained by me through inquiry from the Moody service.

Counsel for respondent renewed his request for a complete statement of the stockyards companies listed in Dr. Dozier's testimony and schedule on page 889 of the transcript. The list was finally furnished and appears in the record as "Government Exhibit 58," respondent objecting on the basis that its incompleteness rendered it immaterial.

**Government
Exhibit 52-D
and 53
admitted.**

1038-D Government Exhibit 52-D, being the May, 1935, issue of "Crops and Markets," a publication of the United States Department of Agriculture, was offered and received in evidence.

Government Exhibit 53, being a copy of the report of the Bureau of Agricultural Economics on direct buying was offered and received in evidence.

1038-E (Whereupon, the witness, Dr. Dozier, was excused).

Trans.

MR. MILES: That is the Government's case.

MR. BOSWORTH: You mean that is all?

MR. MILES: Yes, sir.

MR. BOSWORTH: Mr. Examiner, at this time I would like to ask a question of you. I would like to ask whether under the, as you frequently describe it, the liberal practice, for the Secretary, the Examiner feels that he has the authority to dismiss an investigation of this sort as on a motion for non-suit based upon jurisdiction, or whether that is a power or prerogative solely of the Secretary of Agriculture as the rate making authority which is, as I understand, the situation to be, frankly.

THE EXAMINER: It is with the Secretary and not with the Examiner.

MR. BOSWORTH: Then, any motion which we might have addressed to the jurisdiction of the Secretary due to what we feel to be a lack of proof on the part of the Government, then, should then properly be presented to the Secretary at the time of any oral argument as I understand.

THE EXAMINER: Yes sir, sometimes that motion is made before the Examiner on the record, in which event the Examiner overrules it and then it is considered by the Secretary or you may make it before the Secretary when you argue the case orally before him as you may elect.

MR. BOSWORTH: Well, my point is this exactly that should you state that the Examiner would overrule the motion and you would overrule it on the basis that you have no such authority, and that it must be decided by the Secretary, and therefore I can see no reason for doing a nugatory thing in making the motion now.